

EXHIBIT F

COPY

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* * C O N F I D E N T I A L * *
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
JENNIFER FISCHMAN,

Plaintiff,

-against-

Index No.
18-cv-08188

-----x
MITSUBISHI CHEMICAL HOLDINGS AMERICA, INC.,
MITSUBISHI CHEMICAL CORPORATION,
MITSUBISHI CHEMICAL HOLDINGS CORPORATION,
NICHOLAS OLIVA, in his individual and
professional capacities; DONNA COSTA,
in her individual and professional
capacities; and JOHN DOES 1-10, in
their individual and professional
capacities,

Defendants.

-----x

55 Maple Avenue
Rockville Centre, New York

July 15, 2021
10:06 a.m.

DEPOSITION of NICHOLAS OLIVA, taken by
the attorneys for the Plaintiff, pursuant to
Notice, held before Bonnie Kreuzburg, a Notary
Public of the State of New York, at the
above-stated time and place.

1 A P P E A R A N C E S :

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VALLI KANE & VAGNINI LLP

Attorneys for Plaintiff

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Garden City, New York 11530

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BY: MATTHEW L. BERMAN, ESQ.

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ROBERT J. VALLI, JR., ESQ.

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Attorneys for Defendants, Mitsubishi

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Chemical Holdings America, Inc., Donna Costa
and Nicholas Oliva

10

One Battery Park Plaza, 28th Floor

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BY: MERCEDES COLWIN, ESQ.

12

BRITTANY L. PRIMAVERA, ESQ.

13

14

SHEARMAN & STERLING, LLP

Attorneys for Defendant

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Mitsubishi Chemical Holdings Corporation

599 Lexington Avenue

16

New York, New York 10222

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BY: JEROME FORTINSKY, ESQ.

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1 FEDERAL STIPULATIONS

2 IT IS HEREBY STIPULATED AND AGREED by
3 and between the parties hereto, through their
4 respective Counsel, that the certification,
5 sealing and filing of the within examination will
6 be and the same are hereby waived;

7
8 IT IS FURTHER STIPULATED AND AGREED
9 that all objections, except as to the form of the
10 question, will be reserved to the time of the
11 trial;

12
13 IT IS FURTHER STIPULATED AND AGREED
14 that the within examination may be signed before
15 any Notary Public with the same force and effect
16 as if signed and sworn to before this Court.

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1 N. J. Oliva - CONFIDENTIAL

2 N I C H O L A S J U D E O L I V A,

3 called as a witness, having been first duly

4 sworn by the Notary Public (Bonnie

5 Kreuzburg), was examined and testified as

6 follows:

7 EXAMINATION BY

8 MR. BERMAN:

9 THE REPORTER: Please state your full
10 legal name.

11 THE WITNESS: Nicholas Jude Oliva.

12 THE REPORTER: What is your business
13 address?

14 THE WITNESS: 65 Third Avenue, 12th
15 Floor, New York, New York.

16 Q. Good morning, Mr. Oliva. My name is
17 Matthew Berman. You've seen me before at
18 plaintiff's deposition. I represent plaintiff,
19 Jennifer Fischman, in this matter. Today I'll be
20 asking you a series of questions which you'll be
21 answering having sworn to tell the truth.

22 Do you understand?

23 A. I do.

24 Q. Today, I'll do my best to annunciate
25 my words, but if you do not hear my question,

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2 please let me know and I'll repeat it, okay?

3 A. Okay.

4 Q. If you answer my question, I'm going
5 to assume that you've understood it. If I ask you
6 a question that you do not understand, please let
7 me know I will do my best to rephrase it, okay?

8 A. Okay.

9 Q. As you can see, we have a court
10 reporter here today. She's taking down the
11 questions and the responses. Please, let's try to
12 do our best to only have one of us speaking at a
13 time. I will do my best not to interrupt you
14 during your responses, and if you have a lengthy
15 response, I may even ask you if you have completed
16 it, just to be sure you've had an opportunity to
17 fully explain your answer. In return, I would ask
18 that you try not to interrupt my questions, even
19 if you anticipate what I'm going to ask you, as
20 it's something we commonly do here, right?

21 Do you understand?

22 A. I do.

23 Q. Okay. From time to time, you may hear
24 objections from your counsel. Absent an
25 instruction from your counsel not to answer a

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2 question, I will anticipate receiving your
3 response, okay?

4 A. Okay.

5 Q. It's not my intention to ask you about
6 any privileged or confidential communications
7 you've had with your counsel. So, to the extent
8 that any response would call for that information,
9 please do not volunteer any information that is
10 privileged or confidential between you and your
11 counsel; and, similarly, with respect to any other
12 privileges you may have on behalf of any other
13 party, please don't waive those, okay?

14 A. Okay.

15 Q. With respect to time period, to the
16 extent that I'm asking you questions which could
17 be ambiguous as to the time period, my intention
18 is generally to be asking questions confined to
19 the time period of 2014 through the beginning of
20 2017. But, some of the questions I ask you may be
21 about background or other issues that go back
22 further in time than that.

23 To the extent any question I ask you
24 is unclear with the respect to the time period at
25 issue, feel free to clarify or to ask me to

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2 specify. I'm happy to do that, okay?

3 A. Okay.

4 Q. At any point today, if you want a
5 break at any time, please speak up. I'm happy to
6 accommodate any breaks. It is my intention to
7 take regular breaks, but if you should need one
8 sooner or later, just let me know, or if there are
9 any specific times that you would request a break,
10 please let me know. I will do my best to
11 accommodate that; however, I would ask that if
12 there's a question pending, you complete your
13 response to that question before we move on to a
14 break, okay?

15 A. Okay.

16 Q. So, with that in mind, let's move on.

17 I have three background questions I
18 ask of every witness, and you are no exception,
19 but they're somewhat personal, so please forgive
20 me. But, are you taking or refraining from taking
21 any medication which could affect your ability to
22 testify truthfully and accurately today?

23 A. I am not.

24 Q. Do you have any medical condition
25 which might affect your ability to testify

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2 accurately and truthfully?

3 A. I do not.

4 Q. Do you have any medical condition that
5 impairs your memory?

6 A. No.

7 Q. Okay. Thank you, sir.

8 Have you ever been deposed before?

9 A. No.

10 Q. Have you ever given testimony at trial
11 before?

12 A. Yes.

13 Q. How many times?

14 A. Once.

15 Q. How long ago?

16 A. A few years ago. I'm not sure of the
17 time.

18 Q. What was the general subject matter of
19 that matter?

20 A. I was the plaintiff in a contract case
21 against a contractor for my kitchen, for my stove.
22 Small Claims Court.

23 Q. So that's not relevant to any of the
24 issues here.

25 Just for the sake of clarity, did you

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2 give testimony at an unemployment insurance
3 hearing involving plaintiff?

4 A. Yes.

5 Q. So did that slip your mind
6 momentarily?

7 A. Yes.

8 Q. Okay. Thank you. All right.

9 Did you do anything to prepare for
10 today's deposition?

11 A. I met with my counsel.

12 Q. When did you meet with your counsel?

13 A. Last Thursday.

14 Q. Without revealing the substance of any
15 communications, for how long did you meet with
16 your counsel?

17 A. Most of the day.

18 Q. Did that include Ms. Colwin?

19 A. Yes.

20 Q. Anyone else present?

21 A. Brittany, Jerry.

22 Q. Okay. Are you aware of whether there
23 is a joint representation agreement between your
24 counsel and Mr. Fortinsky?

25 MS. COLWIN: Objection.

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2 MR. BERMAN: You can answer the
3 question, unless you're instructed not to.

4 A. Yes, there is a joint defense
5 agreement.

6 Q. Okay. Thank you.

7 Were there any non-attorneys present?

8 A. No.

9 Q. Were you provided with any documents
10 to review in preparation for today's deposition?

11 A. No.

12 Q. Independent of anything provided to
13 you, did you seek out any documents to review?

14 A. No.

15 Q. You were present at the deposition of
16 Jennifer Fischman, correct?

17 A. Yes.

18 Q. Both days, correct?

19 A. Yes.

20 Q. Did you review the transcript for
21 either day?

22 A. No.

23 Q. Did you review any of the exhibits
24 from that deposition?

25 A. During the deposition.

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2 Q. After the deposition?

3 A. No.

4 Q. Have you discussed this case with
5 anyone else besides your attorneys?

6 A. Yes.

7 Q. Were those discussions non-privileged
8 in nature?

9 A. No.

10 Q. They were privileged communications?

11 A. Yes.

12 Q. Are you presently employed?

13 A. Yes.

14 Q. Where?

15 A. Mitsubishi Chemical Holdings America,
16 Inc.

17 Q. What is your job title?

18 A. General counsel and chief compliance
19 officer.

20 Q. When did your employment commence?

21 A. November 30, 2015.

22 Q. Mr. Oliva, do you have a resumé or a
23 curriculum vitae?

24 A. I have one that is probably not up to
25 date.

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2 Q. When was it last updated?

3 A. I touched it up lightly for the chief
4 legal officer at MCHC, so that he could
5 communicate to the new CEO of MCHC who is on the
6 legal staff globally, but it's not fully updated.

7 Q. Approximately when did that take
8 place?

9 A. Within the last six months.

10 RQ MR. BERMAN: We call for the
11 production of Mr. Oliva's resumé that he
12 just specified.

13 MS. COLWIN: Taken under advisement.

14 MR. BERMAN: Sure.

15 Q. Prior to the light touching up you
16 described of your resumé, when was the last time
17 that you had an updated resumé?

18 A. Likely, for the Mitsubishi Chemical
19 Holdings America general counsel position in 2015.

20 Q. So, could you clarify your answer for
21 me? I'm not exactly certain what that means.

22 Did you update the resumé before
23 taking the job at Mitsubishi --

24 A. Yes.

25 Q. -- Chemical -- I'm sorry, sir. Could

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2 you please just allow me to finish it, so that she
3 can get the full sentence down. I was going to
4 ask you about the job at Mitsubishi Chemical
5 Holdings America.

6 A. Can you repeat the question?

7 MR. BERMAN: Can you read it back.

8 (Whereupon, the requested question was
9 read back by the reporter.)

10 Q. Did you update your resumé prior to
11 taking the job at Mitsubishi Chemical Holdings
12 America?

13 A. Yes.

14 Q. Thank you.

15 Just to make it a little bit easier
16 for us as we go today, I'd like to have your
17 agreement upon the meaning of certain acronyms
18 that I intend to use. So, just so we're clear, if
19 I say the acronym MCHA, I'm referring to
20 Mitsubishi Chemical Holdings America.

21 Does that work for you?

22 A. Yes.

23 Q. Similarly, if I use the acronym MCHC,
24 I'm referring to Mitsubishi Chemical Holdings
25 Corp.

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2 Does that work for you?

3 A. Yes.

4 Q. And, likewise, if I use the acronym
5 MCHJ, I'm referring to Mitsubishi Chemical
6 Holdings Japan.

7 Does that work?

8 A. Yes.

9 RQ MR. BERMAN: We call for production of
10 whatever resumé was just specified by you in
11 connection with the acceptance of the 2015
12 position at MCHA.

13 MS. COLWIN: Objection. Taken under
14 advisement.

15 MR. BERMAN: Thank you.

16 Q. Mr. Oliva, do you maintain an account
17 on LinkedIn?

18 A. Yes.

19 Q. Does it maintain substantive
20 information about your professional background?

21 A. Yes.

22 MS. COLWIN: Objection to form.

23 Q. To the best of your knowledge, is that
24 information accurate?

25 A. I haven't updated that in a while, but

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2 probably.

3 Q. Can you recollect the last time you
4 updated the information?

5 A. No.

6 Q. Is it fair to say, at least up to the
7 time that you provided your last update, that the
8 information listed there was accurate?

9 MS. COLWIN: Objection.

10 A. I would repeat my answer. Generally,
11 I think it's generally accurate, but...

12 MR. BERMAN: Okay. I'm going to have
13 the court reporter mark a document. Just so
14 that you know, procedurally, the way that it
15 works is, if I want to show you a document
16 that hasn't already been marked with an
17 exhibit sticker, the court reporter will
18 apply one on the document and hand it to
19 you; that way, it's clear from the record
20 what documents we're referring to as we go
21 today, okay?

22 THE WITNESS: Uh-huh.

23 MS. COLWIN: What are you going to
24 mark it?

25 MR. BERMAN: It's going to be 44,

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2 Plaintiff's 44. So I'm just going to
3 continue with the numbering --

4 MS. COLWIN: Okay. I just wanted to
5 make sure.

6 (Plaintiff's Exhibit 44, ten-page
7 printout from LinkedIn, referring to
8 Nicholas Oliva, marked for Identification,
9 as of this date.)

10 Q. For identification, Plaintiff's 44 is
11 a ten-page printout. It says LinkedIn on it, and
12 Nicholas Oliva.

13 Mr. Oliva, I'll represent to you that
14 this is a printout I made of a profile on
15 LinkedIn. Are you looking at the document?

16 A. Yes.

17 Q. Have you seen this before?

18 A. The profile or the document?

19 Q. Have you seen the substantive
20 information contained within this document?

21 A. Yes.

22 Q. Does it correspond to your LinkedIn
23 profile?

24 A. Yes.

25 Q. Could you take a moment to just glance

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2 at the profile and let me know if it's accurate
3 with respect to your professional background?

4 A. Yes.

5 Q. You mentioned that there may have been
6 an issue concerning the last time that this
7 information was updated. I'll direct your
8 attention to the bottom of the first page where it
9 says "experience."

10 A. Uh-huh.

11 Q. Do you see where it says "general
12 counsel and chief compliance officer"?

13 A. Yes.

14 Q. So that information is still correct
15 as we sit here today, correct?

16 A. Yes.

17 Q. All right.

18 Does the information listed under
19 there generally describe the job duties and
20 responsibilities you have while serving as general
21 counsel and chief compliance officer?

22 A. I should add MCHC's companies. They
23 now have a subsidiary directly in the U.S.,
24 besides MCHA. There's a lot of reorganization
25 since this was updated, but, generally speaking,

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2 it does.

3 Q. With respect to the subsidiary that's
4 directly in the U.S., can you identify the name of
5 that entity?

6 A. Diamond Edge Ventures.

7 Q. So then, just scrolling through, if
8 you see on page 4 at the bottom, there's a section
9 that's marked "education"?

10 A. Yes.

11 Q. If you could just take a moment to
12 review the education section.

13 Does that look accurate to you?

14 A. Yes.

15 Q. So, you attended Pace University
16 School of Law?

17 A. I did.

18 Q. Did you attend the day program?

19 A. No.

20 Q. Did you attend the night program?

21 A. I did. I worked full time when I went
22 to law school.

23 Q. So is that why it reflects a four-year
24 period of time?

25 A. Yes.

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2 Q. And law school would normally be three
3 years in that day program, correct?

4 MS, COLWIN: Objection.

5 A. It's four-year evening program.

6 Q. Three-year day, four-year evening, and
7 it's for the equivalent program, correct?

8 A. Yes.

9 Q. So where did you work during law
10 school?

11 A. I worked at Pace University for the
12 first two years, and I worked at Mitsubishi
13 Chemical USA for the next two years.

14 Q. You just referred to an entity named
15 Mitsubishi Chemical USA, correct?

16 A. Yes.

17 Q. Is that a predecessor entity to MCHA?

18 A. Yes.

19 Q. And you were there for two years?

20 A. I was there for longer than two years.
21 During law school, I worked there for two years.

22 Q. So you began working there in law
23 school?

24 A. That's correct.

25 Q. And you continued on working there

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2 after you graduated?

3 A. That's correct.

4 Q. What was your position when you first
5 started working at MCUSA?

6 A. Paralegal.

7 Q. And, generally speaking, what were
8 your job duties as a paralegal?

9 A. I supported Kathryn Roche, who's a
10 current member of our team as the assistant
11 general counsel, in her patent portfolio as,
12 primarily, a patent paralegal, but it was a very
13 small department, so many other things. I
14 assisted Donna on M&A. I assisted Isao Yano, who
15 is now a chief legal officer, who was a trainee
16 from Japan at the time, in the office on his deals
17 and activities. I was essentially the only
18 paralegal. Primarily, IP.

19 Q. And then after you graduated law
20 school, did you take the bar?

21 A. I did.

22 Q. And you passed the bar?

23 A. I did.

24 Q. And then, did your job duties change
25 after passing the bar?

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2 A. They did.

3 Q. What did they change to?

4 A. I became -- my title became counsel,
5 and I became primarily responsible for the
6 divestiture and post-closing obligations of Alpha
7 Therapeutic Corporation, while maintaining my
8 obligations as paralegal for IP and other deals.
9 I didn't lose anything. I gained.

10 Q. Understood. So your job duties
11 increased?

12 A. Yes.

13 Q. Now, you mentioned that your job title
14 was counsel. Is that the same as corporate
15 counsel or is it different?

16 A. I think it's the same.

17 Q. Okay.

18 A. I recall it being counsel.

19 Q. Is it possible the job titles changed
20 over the years?

21 MS. COLWIN: Objection.

22 A. That the job title that I had at the
23 time has changed over years?

24 Q. Is it possible that the nomenclature
25 for whatever that position is has changed over

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2 time?

3 A. It's possible. It's also possible
4 that my title was corporate counsel. It was a
5 long time ago.

6 Q. Got it. Thank you. All right.

7 How many years did you remain in that
8 position?

9 A. I stayed there until April of 2007,
10 and I had joined originally in July of 2001.

11 Q. So, did your job duties change from
12 the point in time where you were named counsel or
13 corporate counsel until the time you departed in
14 April of 2007?

15 A. Yes.

16 Q. And, generally speaking, how did your
17 duties change?

18 A. I became primarily responsible for the
19 pharmaceutical-related businesses of Mitsubishi
20 Chemical group.

21 Q. Were those pharmaceutical businesses
22 located within the U.S.?

23 A. Yes.

24 Q. Were any of them outside the U.S.?

25 A. They owned entities outside, Alpha

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2 did. But Mitsubishi Pharma America was the local
3 subsidiary. It did not own entities outside the
4 U.S.

5 Q. Okay.

6 A. Its parent did.

7 Q. Upon your departure from Mitsubishi, I
8 think you said it was Chemical US?

9 A. Correct.

10 Q. Where did you move to?

11 A. Bristol-Myers Squibb.

12 Q. How did you find that position?

13 A. I think it was what was called ACCA at
14 the time, an ACC, Association of Corporate Counsel
15 posting.

16 Q. Is that a Web page?

17 A. It's an association for in-house
18 counsel, and they have a Web page listing.

19 Q. And the Web page has job listings on
20 it?

21 A. It did then, yes.

22 Q. Did you find this Bristol-Myers Squibb
23 job on that Web page?

24 A. I think so.

25 Q. Did you use any recruiters --

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2 A. No.

3 Q. -- while you were looking for jobs?

4 Just a reminder --

5 A. Sorry.

6 Q. -- only one of us can speak at a time.

7 We'll get used to it as we go throughout the day.

8 It's not a problem, but let's just try to keep in

9 mind we have a court reporter here.

10 So I think I just asked you if you
11 used any recruiter.

12 MR. BERMAN: Is that what the last
13 question was? Can you just read that back?

14 (Whereupon, the requested question was
15 read back by the reporter.)

16 Q. So other than using the ACCA Web page
17 that you just described, did you use any other
18 methods to look for jobs when you were seeking to
19 transition?

20 A. I don't remember.

21 Q. Okay. And then, how long were you in
22 that position?

23 A. I moved positions at Bristol, so if
24 you mean how long I was with Bristol; the original
25 position?

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2 Q. Let me clarify, because it seems like
3 my question wasn't clear enough.

4 So, when you first moved to
5 Bristol-Myers Squibb, what job title did you have?

6 A. I don't recall the official title, but
7 we referred to ourselves as brand lawyers.

8 Q. Okay. If you refer to the bottom of
9 page 3 on this document, there is an entry there
10 that says brand hyphen -- or brand/regulatory
11 counsel.

12 Is that comparable to what you just
13 described?

14 A. Yes.

15 Q. Is it the same position?

16 A. Yes.

17 Q. Does this information accurately
18 describe your duties as brand and regulatory
19 counsel in the first position you had at
20 Bristol-Myers Squibb?

21 A. Yes.

22 Q. There's a "see more" here, by the way,
23 so there's more to it. If you look on --

24 A. Okay. There we go.

25 Q. I did my best to print this out in the

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2 expanded mode, but to the extent there's any
3 information, we can reference your LinkedIn,
4 correct?

5 A. Yes, and this is missing.

6 Q. Okay. So that's understood. Okay.

7 Then could you just generally describe
8 your job duties and responsibilities in that role?

9 A. Sure. So I was hired to join a team
10 of regulatory brand -- what we call brand lawyers
11 in the pharmaceutical industry for the primary
12 purpose, originally, of helping launch two brand
13 new immuno-oncology products. The job is giving
14 regulatory counsel to marketing medical clinical
15 teams' leadership, about what they can do from a
16 sales perspective, from a marketing perspective,
17 regulatory perspective; and it includes training
18 physicians who speak for the company, contracts
19 for everything related to the brand, from
20 advertising and promotion, to consulting and media
21 and procurement.

22 At that time, also, it was a very
23 expansive role, because it was prior to a
24 reorganization of how the work would get done from
25 a demand management perspective. So, it was

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2 everything related to those products. The
3 immuno-oncology products became delayed as a
4 result of clinical data, and I took on a virology
5 product for HIV called Ria-daz, (phonetic), and
6 that I supported until the immuno-oncology
7 products came back and were ready for review and
8 filing.

9 Q. Did you have an opportunity to
10 complete your response?

11 A. I think that's a general summary of
12 that position.

13 Q. I'm just making sure. I don't want to
14 interrupt you.

15 Now, you said training physicians,
16 correct?

17 A. Yes.

18 Q. I just want to make sure I got that
19 right.

20 And then, at some point, did your job
21 title change there?

22 A. Yes.

23 Q. What did it change to?

24 A. Corporate counsel, and then senior
25 corporate counsel, I think.

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2 Q. I'll direct your attention to page 2
3 of the document in front of us.

4 Do you see a position there that's
5 listed as senior corporate legal counsel --

6 A. Yes.

7 Q. -- worldwide commercial?

8 Does that encapsulate the two job
9 titles you just mentioned?

10 A. Yes.

11 Q. So on the LinkedIn entry, does the
12 senior corporate legal counsel --

13 MR. BERMAN: Withdrawn.

14 Q. Is it one job title or two that we're
15 talking about?

16 A. Two.

17 Q. Okay.

18 A. I was promoted.

19 Q. So, the listing here only lists one
20 title, correct?

21 A. That's right.

22 Q. So, does this listing basically
23 encapsulate all the duties of both roles?

24 A. Yes.

25 Q. Okay. So then, the description under

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2 senior corporate legal counsel describes the job
3 duties that you had in each of those two
4 positions, correct?

5 A. Correct.

6 Q. So, could you just give me a
7 high-level view of what your role was in the first
8 of those two titles, the corporate counsel role?

9 A. So, the corporate counsel role was
10 part of a brand new organization called Contract
11 Center of Excellence, a portion of the
12 transactional practice group. After they created
13 the practice group model, the transactional
14 practice group was formed, and a division called
15 the Contract Center of Excellence was created, and
16 I reported to the assistant general counsel as
17 corporate counsel to help create that function.

18 So, some of what you see in here, like
19 created contract law 101, series of training
20 modules delivered in person for procurement to
21 increase the knowledge of value-based contracting,
22 that's something I did in the first role.

23 The attorney and residents program in
24 Shanghai is something I did in the second role.

25 Q. Okay. How long were you in the first

1 N. J. Oliva - CONFIDENTIAL

2 role for?

3 A. I don't recall when I got promoted.

4 Q. Well, under the senior corporate legal
5 counsel, it includes an eight-year and three-month
6 period from April 2007 to June 2015.

7 Does that seem right for the amount of
8 time that you were in both of those roles
9 combined?

10 A. No.

11 MS. COLWIN: Objection.

12 A. It doesn't seem right. It seems like
13 the first role shows the entire time at
14 Bristol-Myers Squibb, and the second role shows
15 just the period of the first position. So...

16 Q. So, how long were you at Bristol-Myers
17 Squibb, in total?

18 A. From April 2007 to June 2015.

19 Q. Do you recall how long you were in the
20 corporate counsel role?

21 A. I do not.

22 Q. Do you recall how long you were in the
23 senior corporate counsel role?

24 A. I do not.

25 Q. All right. At some point, did you

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2 transition from Bristol-Myers Squibb to another
3 entity?

4 A. Yes.

5 Q. What was that other entity?

6 A. Catalent, C-A-T-A-L-E-N-T.

7 Q. Is Catalent affiliated in any way with
8 Bristol-Myers Squibb?

9 A. No.

10 Q. Was it at the time?

11 A. No.

12 Q. So, how did it come to pass that you
13 transitioned from Bristol-Myers Squibb to
14 Catalent?

15 A. I was looking for an advancement
16 position at Bristol, within Bristol, and outside
17 Bristol, also. And I had interviewed at several
18 places, I had used a recruiter, and I found,
19 interviewed for, and was provided an offer and
20 accepted at Catalent. That process was some time.

21 Q. With respect to your decision to seek
22 advancement, how did you go about seeking
23 advancement within Bristol-Myers Squibb?

24 A. I spoke to my supervisors, I spoke to
25 members of other practice group areas, and I used

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2 a relationship network.

3 Q. What is a relationship network?

4 A. It's where you keep good relationships
5 with the people that you used to work with, or key
6 people who have some connection, who might be able
7 to make that happen for you.

8 Q. So, is this some kind of external
9 organization or are you referring to your own
10 connections with people?

11 A. My own internal with -- within
12 Bristol-Myers Squibb.

13 Q. After engaging in the activities you
14 just described, did you form some conclusion as to
15 whether you were going to be able to advance
16 within Bristol-Myers Squibb?

17 MS. COLWIN: Objection.

18 A. I was not going to get the position
19 that I wanted to get.

20 Q. Which position did you want?

21 A. There was a position in Tokyo.

22 Q. What is your understanding of why you
23 were not going to get that position?

24 MS. COLWIN: Objection.

25 A. I understand that they went to hire a

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2 local bengoshi.

3 Q. What is a bengoshi?

4 A. In Japan, bengoshi is a certified
5 lawyer, one who is very rare. It's very difficult
6 to pass the bengoshi exam in Japan. If you think
7 the New York and California bars are hard, at that
8 time, I recall it being a miniscule percentage of
9 people who pass.

10 Q. Are you licensed in New York?

11 A. Yes.

12 Q. Are you licensed in California?

13 A. No.

14 Q. So you're just mentioning that to draw
15 a comparison?

16 A. Correct.

17 MS. COLWIN: Objection.

18 Q. Thank you.

19 So, after learning that Bristol-Myers
20 Squibb was seeking to hire a bengoshi, did you
21 decide to look for new positions externally?

22 A. I think I had already begun.

23 Q. And you mentioned that you used
24 recruiters, correct?

25 A. Yes.

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2 Q. Which recruiters did you use?

3 A. Princeton Legal.

4 Q. Any others?

5 A. No.

6 Q. Had you used Princeton Legal
7 previously?

8 A. Previously to what?

9 Q. Previously to when you began searching
10 externally, after being at Bristol-Myers Squibb?

11 A. No.

12 Q. I think you testified earlier that you
13 consulted with recruiters in seeking the brand
14 regulatory counsel at Bristol-Myers Squibb; did I
15 get that correct?

16 A. You did not.

17 MS. COLWIN: Objection.

18 Q. Did you ever use recruiters after law
19 school, before joining Bristol-Myers Squibb?

20 A. No.

21 Q. So, was this interaction with
22 Princeton the first time you had worked with
23 recruiters?

24 MS. COLWIN: Objection.

25 A. Yes.

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2 Q. Okay. Thank you.

3 So, other than consulting with
4 Princeton Legal Group, what other steps did you
5 take in your job process, your job search process?

6 A. I don't recall.

7 Q. Did you look for jobs on LinkedIn?

8 A. I don't think so.

9 Q. Did you look for jobs on ACCA?

10 A. I don't remember, but probably.

11 That's how I found the Bristol job.

12 Q. Did you consult any other job boards?

13 A. I don't remember.

14 Q. Okay. That's fine.

15 All right. Could you describe
16 generally for me the position you had at Catalent?

17 A. So, I was the associate general
18 counsel, which at Catalent is one step above
19 assistant general counsel. I reported directly to
20 the general counsel, and I supported one of three
21 main businesses as being the primary lawyer for
22 the president of the -- essentially, the R&D
23 function of Catalent.

24 Q. Listed on page 2 of the document, does
25 this describe that position correctly?

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2 A. Yes.

3 Q. Does it omit anything material?

4 A. It's a very small summary, so,
5 possibly.

6 Q. Well, looking at it now, is there
7 anything important that you would add to that?

8 MS. COLWIN: Objection.

9 A. I can't recall anything. I can't
10 think of anything right now that I would add.

11 Q. If your recollection should change as
12 we're having a discussion today, would you please
13 let me know?

14 A. Yes.

15 Q. Thank you.

16 So then, at some point in time --

17 MR. BERMAN: Withdrawn.

18 Q. In the time between you joined
19 Catalent and the time that you first departed from
20 Mitsubishi Chemical Corporation, did you maintain
21 contact with any personnel from Mitsubishi?

22 MS. COLWIN: Can I just have that read
23 back?

24 (Whereupon, the requested question was
25 read back by the reporter.)

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2 MS. COLWIN: I missed the "first
3 departed." That's the word I missed. Okay.

4 Q. Is that question clear?

5 A. No.

6 Q. Okay. What I'm interested in learning
7 is whether you had contact with any personnel from
8 MCHA, after the time that you departed from MCHA
9 up until the time that you joined Catalent?

10 Does that make sense?

11 A. Yes.

12 Q. Okay.

13 A. Can I ask, only MCHA or any Mitsubishi
14 Chemical group?

15 Q. My intention is to start with MCHA and
16 then expand from there, but if it helps you to
17 clarify, then that's fine.

18 A. Yes. I have -- I maintained contact
19 with Donna Costa, who was at MCHA, and others who
20 were at other companies.

21 Q. So, can you describe for me how you
22 maintained contact with Ms. Costa during that time
23 period?

24 A. Yeah. We talked once in a while, we
25 sought to meet once in a while and catch up, and

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2 she was a reference for me in job searches.

3 Q. Did Ms. Costa provide you with a
4 written reference?

5 A. Yes.

6 Q. Did she provide you with more than one
7 written reference?

8 A. I don't remember. In fact, I'm not --
9 I'm not sure I can picture a written ref -- she
10 provided me with references. Whether the
11 reference calls for documents, I don't recall.
12 But more than one time she served as a reference
13 for me for sure.

14 MR. BERMAN: There's a disturbance.

15 Can you just give me one second.

16 (Pause in proceedings.)

17 Q. How did it come to pass that you were
18 provided with a reference from Ms. Costa?

19 A. I asked.

20 Q. At what point in time did you ask for
21 the reference?

22 A. I asked -- I think the first time I
23 asked was for a company called Savient, also a
24 pharmaceutical company in New Jersey. I think the
25 second time I asked was for a company called

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2 Valiant, also a pharmaceutical company in New
3 Jersey, and for the Catalent position. I don't
4 recall if I asked for anything else. I did not
5 ask for one for the Bristol-Myers Squibb job. I
6 don't recall. I don't recall asking for one.

7 Q. Okay. When you transitioned out from
8 Mitsubishi Chemical Holdings Association to
9 Bristol-Myers Squibb, was that a voluntary
10 departure?

11 A. Yes.

12 Q. Did they know you were looking for
13 another position?

14 MS. COLWIN: Objection.

15 A. Not to my knowledge.

16 Q. Did you explore whether you had an
17 opportunity for further advancement within MCHA
18 before you departed?

19 MS. COLWIN: Objection.

20 A. I recall talking to Donna about the
21 department and my focus on pharma, and what the
22 likelihood of Mitsubishi Tanabe -- well, at that
23 time it wasn't Tanabe -- Mitsubishi Pharma
24 Corporation bringing pharmaceutical product to the
25 U.S. was. I think it's on that basis that I made

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2 the decision for the career I wanted.

3 Donna was clear that her opinion was
4 that I should -- my skill set and my focus should
5 be on being a generalist, and plenty of those
6 opportunities existed for me at Mitsubishi.

7 Q. So, did you think it was in your
8 interest to become a generalist and to focus on
9 that?

10 MS. COLWIN: Objection.

11 A. Looking back, I think she was right.
12 At that time, I wanted to focus on being a pharma
13 lawyer.

14 Q. So at that time, was it your
15 understanding that it was unlikely in the near
16 term for Mitsubishi to bring a pharma product on
17 line?

18 A. In the U.S.

19 MS. COLWIN: Objection.

20 Q. All right. So, did you ask Ms. Costa
21 for a job reference before departing MCHA?

22 A. I don't recall doing that.

23 Q. So you mentioned asking her for a
24 reference in connection with a position at
25 Savient, correct?

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2 A. Savient. And Valiant and Catalent.

3 Q. So, was the position at Savient one
4 that you were applying to before you joined
5 Bristol-Myers Squibb?

6 A. No.

7 Q. Was it a position you were interested
8 in after already being at Bristol-Myers Squibb?

9 A. Yes.

10 Q. Was that a written reference?

11 MS. COLWIN: Objection.

12 A. I don't recall.

13 Q. Do you know whether Ms. Costa provided
14 you with a written reference that you could use
15 for multiple job applications during the course of
16 your career?

17 A. I don't think so.

18 Q. So whenever you asked her for a
19 reference, it was for a particular application?

20 A. That's correct.

21 Q. Okay. Thank you.

22 So then, you discussed that you had
23 been in contact and maintained contact with
24 Ms. Costa. I believe you testified that you spoke
25 with her once in a while; is that correct?

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2 MS. COLWIN: Objection.

3 Q. Did I get that right?

4 A. I think that's what I said.

5 Q. Approximately how often did you speak
6 with Ms. Costa after you first departed MCHA?

7 A. I would say several times a year.

8 Q. Did you have meetings with her during
9 that time?

10 A. Sometimes, dinner or lunch.

11 Q. Okay. And from the time that you
12 joined --

13 MR. BERMAN: Withdrawn.

14 Q. Did there come a time when you learned
15 that there might be a new opportunity for you at
16 Mitsubishi Chemical Holdings America?

17 A. Sorry, could you repeat the question?

18 MR. BERMAN: Can you read it back,
19 please.

20 (Whereupon, the requested question was
21 read back by the reporter.)

22 A. Yes.

23 Q. Approximately when was that?

24 A. Um, I think that was in August of
25 2015.

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2 Q. So prior to August of 2015, did you
3 maintain contact with anyone else in any
4 Mitsubishi entity other than Ms. Costa?

5 MS. COLWIN: Objection.

6 A. Yes.

7 Q. Can you identify those people?

8 A. Riu Eato (phonetic) from Mitsubishi
9 Pharma in Japan. Hiroo Uemura, U-E-M-U-R-A,
10 from -- currently at Japan Blood Products, but
11 formerly of Mitsubishi Pharma Corporation in
12 Japan.

13 That's all I can recall right now.
14 Those were the two main contacts in Japan for me
15 that I visited.

16 Q. You just mentioned that you visited
17 Japan?

18 A. Yes.

19 Q. In the time period after you first
20 departed MCHA, when did you visit Japan?

21 A. It was as part of working for
22 Bristol-Myers Squibb. I was responsible for Asia,
23 Shanghai was our headquarters, and I had a
24 bengoshi reporting to me in Tokyo. So I visited
25 maybe -- I don't recall the dates.

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2 Q. Do you recall the year?

3 A. No.

4 Q. Did you make more than one trip to
5 Japan while you were at Bristol-Myers Squibb?

6 A. I think one trip to Japan, and
7 multiple to China.

8 Q. Had you planned to visit Japan in
9 2014?

10 A. In 2014?

11 Q. Yes.

12 A. I don't recall.

13 MR. BERMAN: I'm going to have the
14 reporter mark a document, so this should be
15 45.

16 (Plaintiff's Exhibit 45, one-page
17 document Bates stamped MCHC-0001321,
18 confidential, marked for Identification, as
19 of this date.)

20 MR. BERMAN: I'll identify the
21 document. It's MCHC-0001321. It's one
22 page.

23 Q. Let me know when you're ready, please.

24 A. Okay.

25 Q. Mr. Oliva, are you looking at the

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2 document?

3 A. Yes.

4 Q. Have you seen it before?

5 A. I must have.

6 Q. Can you tell me what it is?

7 A. It's an e-mail from Hiroo Uemura, who
8 I just communicated about, to me, about possibly
9 meeting in Japan, and then an e-mail back saying,
10 I'm sorry, but I can't make it.

11 Q. Does this refresh your recollection as
12 to whether you had planned to visit Japan in 2014?

13 A. Yes.

14 Q. Was this in connection with your work
15 for Bristol-Myers Squibb?

16 A. Yes.

17 Q. Do you recall whether you actually
18 went to Japan?

19 MS. COLWIN: Objection. At what point
20 in time?

21 MR. BERMAN: In connection with this
22 e-mail.

23 Q. Did you cancel your trip?

24 A. Yes.

25 Q. But, subsequently, was there another

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2 occasion where you visited Japan?

3 A. I did visit Japan and met with Ray
4 Morozon (phonetic.)

5 Q. And, approximately, when did that take
6 place?

7 A. It must have been after this, because
8 this says, "after seeing you after all these
9 years." So it must have happened after this.

10 Q. Okay. Did your subsequent visit to
11 Japan take place before you rejoined MCHA?

12 A. Yes.

13 Q. Was that in connection with your work
14 at Bristol-Myers Squibb?

15 A. Yes.

16 Q. Prior to originally departing MCHA,
17 had you ever traveled to Japan?

18 A. I'm sorry, say it again?

19 Q. Had you ever traveled to Japan prior
20 to your first departure from MCHA?

21 MS. COLWIN: Objection.

22 A. Yes.

23 Q. Approximately when did you travel to
24 Japan?

25 A. I think it was November of 2006.

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2 Shortly before I left.

3 Q. Was that in connection with your work
4 for MCHA?

5 A. Yes.

6 Q. Who made the determination to send you
7 to Japan?

8 MS. COLWIN: Objection.

9 A. I don't know the answer.

10 Q. What were the circumstances
11 surrounding your visit?

12 A. I had traveled with Ken Fujiwara and
13 Hiroo Uemura significantly many trips, mostly with
14 Hiroo Uemura, to L.A., Europe, related to Alpha
15 Therapeutical Corporation post-closing, and I went
16 to visit, after all that time, the headquarters in
17 Osaka and, of course, in Tokyo. So it was a -- it
18 was business travel. I had not been there before,
19 and I had supported these businesses for a long
20 time.

21 Q. Did you meet any executives on your
22 trip?

23 MS. COLWIN: Objection.

24 Q. Mitsubishi executives.

25 A. I'm sure I did.

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2 Q. Okay. Sitting here today, can you
3 recall whether anyone was at the president level
4 or above?

5 A. I'm sure I did not meet the president
6 of Mitsubishi Chemical Holdings at that time.

7 Q. Did you meet any Board of Directors
8 level personnel?

9 A. I don't recall.

10 Q. Okay. Thank you.

11 A. I think it would be unlikely.

12 Q. Okay. Thank you.

13 So, going back to that time around
14 August 2015, when you first learned of an
15 opportunity at MCHA. How did you come to learn of
16 that opportunity?

17 A. How did I come to learn about the
18 opportunity of the general counsel position?

19 Q. Let's try asking it a different way.

20 A. Okay.

21 Q. You had discussed that you had
22 maintained contact with Donna Costa over the
23 years. Did there come a time in approximately
24 August 2015 when you met with Ms. Costa?

25 A. Yes.

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2 Q. Was that surrounding her birthday?

3 A. Yes, it was around the time of her
4 birthday, and she -- and I had been at Catalent,
5 for which she served as a reference.

6 Q. So, had you spoken to Donna about any
7 opportunities at MCHA prior to August 2015, but
8 after you had joined Catalent?

9 MS. COLWIN: Objection.

10 A. No.

11 Q. So, on or around Ms. Costa's birthday
12 in August of 2015, what did you discuss concerning
13 opportunities at MCHA?

14 A. Um, I recall Donna saying something
15 like, I'm having some trouble, or, you know,
16 there's some problems in the department, it's too
17 bad that you would not be interested in a position
18 in New York. Something like that.

19 Q. Did she indicate what the nature of
20 the trouble was?

21 A. No.

22 Q. Did she get into any more depth about
23 the problems?

24 A. No. Not to my recollection.

25 Q. Was there any discussion of

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2 Ms. Fischman at that meeting?

3 A. I'm not sure if she was even
4 identified by name. I think Donna was telling me
5 that things were not going all that well, and I
6 recall it being sort of something of an offhanded
7 comment like, you know, it's too bad that you
8 didn't live anywhere near, or you wouldn't be
9 interested, or you wouldn't be able to commute, or
10 something like that. And I said, for a general
11 counsel position, maybe I would. That kind of
12 response.

13 Q. Was there any discussion about the
14 nature of the general counsel position at that
15 time?

16 A. I don't think so.

17 Q. So, was your understanding of the
18 nature of the general -- first of all, did you
19 have any understanding of what that general
20 counsel position at MCHA involved?

21 A. Yes.

22 Q. Was that predicated upon your past
23 experience in the legal department there?

24 A. Yes.

25 Q. Did you have any discussion about

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2 whether the role had changed over time since you
3 left?

4 A. Very unlikely at that meeting, but,
5 yes.

6 Q. Was there anything else that you
7 recall discussing with Ms. Costa during that
8 August meeting?

9 A. I probably talked to her about my
10 Catalent position.

11 Q. What did you tell her about your
12 Catalent position at the time?

13 A. I don't remember exactly, but I had
14 been -- I had settled into role -- I had just
15 started in June, but I had settled into role and
16 found it -- people were great and the company is
17 great, I don't have anything bad to say about it,
18 but the role was relatively small.

19 Q. When you say the role was relatively
20 small, what do you mean by that?

21 A. I think I had more responsibility in
22 my -- more breadth of responsibility in my global
23 role as Bristol, but this was -- it was a good
24 opportunity.

25 Q. Was the Catalent position more closely

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2 aligned with your previously-stated goal of
3 becoming a pharma lawyer?

4 MS. COLWIN: Objection.

5 A. Well, the Catalent position was very
6 much aligned and strategic for me and my goal to
7 become a general counsel.

8 Q. So it was more broadly focused?

9 A. It was different, it filled a little
10 bit of a gap, and the title was certainly a step
11 in the right direction.

12 Q. So, can you give me any examples of
13 types of work that you performed at Catalent that
14 would be aligned more closely with your goal of
15 becoming a general counsel?

16 A. Yes. So, at that time, I expected
17 that, at some point, I would be the general
18 counsel of the pharmaceutical-related business,
19 and so I wanted to have the manufacturing and
20 small batch operations experience that Catalent
21 had, that Bristol does, but I didn't have exposure
22 to.

23 Q. Did you have any discussions with
24 Ms. Costa around August 2015 about the prospects
25 of any Mitsubishi-related entities bringing a

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2 pharma product to market?

3 A. No.

4 Q. Okay.

5 A. Not that I recall.

6 Q. At the time that you had the meeting
7 with Ms. Costa in August of 2015, were you still
8 interested in knowing whether Mitsubishi planned
9 to bring pharmaceutical products to market?

10 A. Probably not. We might have even been
11 competitors. I don't know what their area of
12 expertise was, so I probably would have avoided
13 having that conversation.

14 Q. Okay. So, after August '15, when was
15 the next time that you had any interaction with
16 folks at MCHA concerning a potential opportunity
17 for you to become general counsel?

18 A. Well, that meeting sort of lit a
19 candle, so we started to meet regularly and speak
20 regularly after that. Probably -- I think I had a
21 vacation right after that, a preexisting vacation.
22 And it's probably when I got back from that. So,
23 again, maybe the end of August or beginning of
24 September where we picked up the conversation,
25 which, as I recall, was something like, if we're

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2 serious about this, we need to start -- we need to
3 talk about it.

4 Q. So, approximately how many meetings
5 are we talking about?

6 MS. COLWIN: Objection.

7 Q. Do you understand the question?

8 A. How many meetings?

9 Q. Yes. Approximately how many meetings
10 did you have with Ms. Costa after that August 2015
11 conversation, but before November 30, 2015?

12 A. Yeah. I would say in person, two or
13 three times, and by phone more than that.

14 Q. Did you have any discussions about the
15 nature of the GC position that MCHA was seeking to
16 fill?

17 A. Yes.

18 Q. What did Ms. Costa tell you about the
19 nature of the GC position she was looking to fill?

20 A. She told me about -- at that point,
21 she started to tell me about the issues she was
22 having, and questioned me mostly about my
23 experience and if there were gaps, and if there
24 were gaps, how we would fill those gaps and those
25 kinds of things. The nature of the position, I

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2 had generally known, and the response to that
3 question is really about the difference between
4 what Mitsubishi Chemical Holdings group looked
5 like when I left and what it looked like in 2015.

6 Q. Did you complete your response?

7 A. Yes.

8 Q. So, I want to just unpack that a
9 little bit. I'm going to start with the questions
10 about the gaps in your experience.

11 Were the two of you able to identify
12 any gaps?

13 MS. COLWIN: Objection.

14 A. We talked about Donna's concern about
15 the gaps, and, if there were gaps, what they would
16 be and how we would manage those.

17 Donna was rigorous in the conversation
18 with me about my experience, because although we
19 spent time communicating and kept our
20 relationship, I didn't tell her on a day-to-day
21 basis, nor could I, what the kinds of things that
22 I really worked on, so she didn't really have a
23 great depth of understanding of what I had done
24 for the eight, nine years or however long it had
25 been since I left.

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2 Q. The nature of your duties at Catalent
3 were to provide legal advice and counsel, among
4 other things?

5 MS. COLWIN: Objection.

6 Q. Is that correct?

7 A. At Catalent?

8 Q. Yes.

9 A. Yes.

10 Q. So you couldn't reveal those in a
11 discussion with a prospective employer, correct?

12 MS. COLWIN: Objection.

13 A. Correct.

14 Q. So, what concerns about potential gaps
15 in your experience did Ms. Costa identify?

16 MS. COLWIN: Objection.

17 A. Donna identified a question as to what
18 experience I had in the antitrust and in M&A. I
19 think those were the two major areas of concern
20 for Donna.

21 Q. Did she ask you anything about
22 compliance experience?

23 A. No. Well, yes, but she knew. She
24 didn't identify that as a gap or a concern.

25 Q. So, at that point, did you have

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2 substantive compliance experience?

3 A. Yes.

4 MS. COLWIN: Objection.

5 Q. In your career, up until that point in
6 time, had you had any antitrust exposure?

7 A. Yes.

8 Q. What was the general nature of that?

9 A. Well, there's a lot. So, antitrust
10 exposure in the pharmaceutical industry is very
11 complicated. Most of the products that we worked
12 on and most of the products that I worked on as
13 the commercial lead for the transaction group were
14 joint venture products. And as a brand lawyer, I
15 worked on joint venture products.

16 So, from an antitrust perspective, I
17 drafted provisions to ensure protection of
18 collaborations and to avoid any problem related to
19 collaborations or inappropriate disclosures.

20 As a brand lawyer, we had joint calls
21 with collaboration partners. There's a lot of
22 antitrust-related concern in a highly-regulated
23 industry that is so often partnered. We had
24 collaborations with multiple companies on multiple
25 products that I supported.

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2 Q. Up until that same point in time, did
3 you have mergers and acquisitions exposure?

4 A. Yes.

5 Q. What was the general nature of that
6 exposure?

7 A. Well, the first exposure was Alpha
8 Therapeutic Corporation. Actually, I take that
9 back. The first exposure was Western Lithotech,
10 which is a divestiture by Mitsubishi Chemical
11 group. When I was here the first time as a
12 paralegal, and I worked on that supporting
13 Yano-san and Donna.

14 Then Alpha Thera -- others, I think,
15 also that I can't recall, small, small
16 divestiture. Then Alpha Therapeutic, which is a
17 major divestiture, where we retained the entity
18 and the liabilities and sold all the assets to
19 entities, and all of those post-closing
20 obligations.

21 And then at Bristol, the Medarex deal,
22 which was a -- over a 2 billion-dollar deal that
23 brought those immuno-oncology-related products to
24 Bristol. And then the diabetes franchise
25 divestiture of over \$6 billion to AstraZeneca that

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2 I worked on as part of the commercial group. And
3 then the closeout of the Otsuka franchise for
4 Abilify, which I worked on. So, many.

5 Q. Did you relate all of those
6 experiences in M&A to Ms. Costa?

7 MS. COLWIN: Objection.

8 A. I don't recall.

9 Q. Did you describe then generally to
10 her?

11 A. I would think that I would explain to
12 someone who's concerned about whether I had M&A
13 experience, that I did have M&A experience.

14 Q. Likewise, you did the same with the
15 antitrust?

16 A. Yes.

17 Q. After providing Ms. Costa with that
18 information, were there any other potential gaps
19 in experience that she expressed concern over?

20 MS. COLWIN: Objection.

21 A. I think the answer to that is no.

22 Q. Okay. So, in the course of your
23 discussions with Ms. Costa, can you recall any
24 other subject matter relating to the opportunity
25 of general counsel?

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2 MS. COLWIN: Objection.

3 Q. Can you recall what you said to her or
4 what she said to you, other than what you've just
5 described in these conversations?

6 A. About the subject matter of the
7 position?

8 Q. Yes.

9 A. I do recall Donna communicating that
10 it's a big role, that the company has changed,
11 that it's undergoing change. I don't remember if
12 there was -- I'm sure we talked about a lot of
13 things when we met, but I can't recall any
14 specifics.

15 Q. Did you have any discussions with
16 Ms. Costa about the chief compliance officer
17 aspect of the position?

18 A. Yes.

19 Q. What was the general nature of those
20 discussions?

21 A. It was about the role of chief
22 compliance officer and my experience that would
23 very easily fit and match that.

24 Q. So, during the course of these
25 discussions, did Ms. Fischman's name come up?

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2 A. Yes.

3 Q. What discussions did you have
4 concerning Ms. Fischman?

5 MS. COLWIN: At what time?

6 MR. BERMAN: At any of these times
7 during --

8 Q. You mentioned that you had
9 approximately two or three conversations, so
10 that's what I'm focusing on.

11 A. Plus by phone. Sorry to interrupt.

12 Q. Sure. Let's agree that we're
13 including those conversations. I'm interested in
14 any conversation you had with Ms. Costa in the
15 period leading up to November 30, 2015 that
16 concerned Ms. Fischman.

17 Maybe just to try to parse it and make
18 it a little easier. When is the first time that
19 Ms. Fischman's name arose or she was identified in
20 a conversation by her position?

21 A. I don't remember the first time that
22 her name arose. I think it started as a pretty
23 rigorous interview process about me and whether
24 this position and my experience was a match and
25 whether I was interested and whether this was

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2 something that we were really going to be able to
3 pursue.

4 Later on, as it became clear that we
5 both seemed interested, Donna did discuss with me
6 that she had some trouble with Jennifer and that
7 it was likely that Jennifer would leave the
8 company, or it was possible that Jennifer would
9 leave the company upon being returned to her
10 position. But, if she didn't, it was in my best
11 interest, because Jennifer had years of experience
12 that could help me in my transition into the role.
13 And that if I was comfortable, you know, making
14 that work, that could be a really good benefit.
15 Not necessarily if I was comfortable, I didn't
16 have a say in that, but, really, if I could make
17 that work, it would be better for the department
18 and probably better for my success, if -- if we
19 could make that work.

20 Q. So, I think you generally described
21 for me the process of determining whether this was
22 a match, right?

23 Did you leave anything out of that,
24 that was important?

25 A. It was pretty rigorous, but I think I

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2 said that.

3 Q. And then you mentioned part of the
4 discussions were to determine your level of
5 interest.

6 How did that come about?

7 A. Well, as I mentioned, the first thing
8 Donna said is that offhanded comment was, it's too
9 bad that you wouldn't be interested, or it's too
10 bad it's too far away, or something like that.
11 And that's how this whole thing started. Because
12 I said, well, you know, my goal is to get -- is to
13 be general counsel. People at Bristol knew that.
14 That's what I wanted to do. And so, if I had the
15 opportunity to become a general counsel, then I
16 would consider either moving or communicating or
17 making it work, if the position's right.

18 Q. Where were you living at the time?

19 A. Where I live currently, in
20 Robinsville, New Jersey.

21 Q. Was there any discussion about the
22 compensation attendant to the position?

23 MS. COLWIN: Objection.

24 A. Yes.

25 Q. What was that discussion?

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2 A. Well, I don't think there was only one
3 discussion. When we got to the point of the
4 offer, Donna made an offer to me and I began
5 negotiating with her, having just gone through the
6 process not that long ago, not long previous to
7 this with Catalent.

8 Q. Prior to the point in time where Ms.
9 Costa -- well, prior to the point in time where
10 MCHA offered you the general counsel and chief
11 compliance officer position, had there been any
12 discussion about the compensation tied to that
13 role?

14 A. I don't think so.

15 Q. Did Ms. Costa mention to you that
16 there was a budget for the position?

17 A. I don't think so.

18 Q. Now, just backing up to the discussion
19 concerning Ms. Fischman. Had you worked with Ms.
20 Fischman at MCHA in your first time at that
21 company?

22 A. No.

23 Q. That was before she was there,
24 correct?

25 A. Correct.

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2 Q. So, did you know anything about
3 Ms. Fischman prior to joining MCHA as a general
4 counsel and chief compliance officer?

5 MS. COLWIN: Objection.

6 A. Nothing except what we talked about
7 immediately prior to my acceptance.

8 Q. Okay. I think you just described --

9 MR. BERMAN: Withdrawn.

10 Q. So, did Ms. Costa relate to you
11 information about Ms. Fischman's skills and
12 experience?

13 MS. COLWIN: Objection.

14 A. I think generally she had been there
15 ten years, she supported multiple clients, those
16 kinds of things. I don't recall anything
17 specific. Mostly the conversation was around the
18 volume of work and the big challenge this would
19 be, and that having help is good. And Jennifer
20 could be that.

21 Q. So, I understood you to be telling me
22 that there was a high volume of work.

23 Did I get that correct?

24 MS. COLWIN: Objection.

25 A. In the general counsel position?

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2 Q. Yes.

3 A. Yes.

4 Q. You were supporting many affiliates of
5 Mitsubishi, correct?

6 MS. COLWIN: Objection.

7 MR. BERMAN: You can answer.

8 A. Yes.

9 Q. So, did Ms. Costa relate to you
10 anything about her level of confidence in
11 Ms. Fischman being able to support you in your
12 role as general counsel?

13 A. I recall that she did not necessarily
14 expect Jennifer would stay, when being returned to
15 her position, and that it might be very difficult.
16 And I recall saying that I think I can make it
17 work. I don't know Jennifer, and we can start
18 with a clean slate, and I'm pretty good at
19 relationships with people and building teams, so I
20 think we can -- we'll work it out. I think it'll
21 be fine. I came into that pretty confident that
22 there wasn't going to be much of an issue.

23 Q. Okay. And you made a comment earlier
24 that you didn't have a say in whether she would
25 stay or leave.

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2 Who did have that say?

3 A. Jennifer.

4 Q. Well, who at the company would be able
5 to make the determination whether she would stay
6 on after you had joined?

7 A. Who -- can you repeat the question?

8 MR. BERMAN: Would you read it back,
9 please.

10 (Whereupon, the requested question was
11 read back by the reporter.)

12 MS. COLWIN: Objection.

13 Q. Do you understand the question?

14 A. I think so, but I don't know that I
15 know the answer. I wasn't there.

16 Q. Then let me rephrase the question.

17 After you joined the company as
18 general counsel and chief compliance officer on
19 November 30, 2015, you became Ms. Fischman's
20 supervisor, correct?

21 A. Yes.

22 Q. In that capacity, did you have the
23 authority to determine whether she would stay on
24 at the company?

25 A. Yes.

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2 MR. BERMAN: Let's take a two-minute
3 break or a five-minute break.

4 (Recess taken: 11:16 to 11:26 a.m.)

5 Q. Mr. Oliva, you mentioned that at some
6 point in time, MCHA made you an offer for the
7 position. How much compensation did they offer
8 you?

9 A. I believe --

10 MS. COLWIN: I'm going to object to
11 form, but allow him to answer.

12 A. I believe the original offer was
13 300,000.

14 Q. Okay. And did you negotiate the
15 offer?

16 A. I did.

17 Q. And --

18 A. And all of the --

19 Q. I'm sorry. I didn't mean to interrupt
20 you.

21 A. I thought I interrupted you.

22 Yes, I negotiated the offer and all of
23 the surrounding comp model.

24 Q. What ended up being the compensation
25 package applicable to your position when you

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2 joined?

3 MS. COLWIN: Objection.

4 Q. Do you understand the question?

5 A. I think I understand it.

6 Q. I can rephrase it.

7 How were you compensated when you
8 joined MCHA as general counsel and chief
9 compliance officer, when you first joined?

10 MS. COLWIN: Objection.

11 A. I don't recall exactly, but I think it
12 was 325K base and 29 percent bonus. I had
13 negotiated out a car that was part of policy
14 applicable to the position. I had negotiated in a
15 signing bonus for the purposes of paying back my
16 Catalent signing bonus, and I had negotiated up
17 the base on the basis of my prior experience and
18 whether this was worth it for me to come to the
19 city and take this bigger job and all of those --
20 all of those things. Yeah.

21 Q. What was your base at the Catalent
22 position that you were departing from?

23 RL NS. COLWIN: Objection. Don't answer.

24 Mark it for a ruling.

25 MR. BERMAN: Okay. Please mark that

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2 testimony for a ruling.

3 MS. COLWIN: I'll revisit it, Matt,
4 but let me think about it. I'll revisit
5 that question.

6 MR. BERMAN: I don't see any basis
7 for --

8 MS. COLWIN: We don't have to con --
9 table it. We'll talk later.

10 MR. BERMAN: Okay. Yesterday, we
11 raised a number of issues to be tabled, and
12 I requested a response from you by the end
13 of the day. I would make the same request
14 today.

15 MS. COLWIN: Okay. I had no control
16 over the other dep, but, okay.

17 Q. Who did you have these negotiations
18 with?

19 A. Donna, primarily, and Pat Saunders,
20 who's the HR for MCHA, with whom I interviewed.

21 Q. What was the interview process in
22 order to obtain the job?

23 A. The multiple meetings and
24 conversations with Donna and in-person interviews
25 with Kathryn Roche and Pat Saunders.

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2 Q. Were you asked to submit a resumé in
3 connection with your consideration for the
4 position?

5 A. I think so.

6 Q. Do you still have a copy of that
7 resumé?

8 A. I don't know.

9 Q. Did you search for it as part of this
10 litigation?

11 A. Did I search for it specifically? I
12 don't know if it was part of the requests. We had
13 many requests for searching, so I can't recall.

14 Q. In connection with the discovery
15 demands that plaintiff propounded upon you during
16 this case, did you exercise your best efforts to
17 try to locate responsive documents?

18 A. I did.

19 Q. Did you provide them to your counsel?

20 A. I did.

21 Q. Do you know if that included a copy of
22 your resumé?

23 A. I don't recall.

24 RQ MR. BERMAN: We'll call for production
25 of any resumé that was submitted in

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2 connection with Mr. Oliva's consideration
3 for the general counsel, chief compliance
4 officer position.

5 MS. COLWIN: Taken under advisement.

6 MR. BERMAN: Thank you.

7 Q. Other than the compensation that
8 you've described, the base, the bonus, the car and
9 the retainment of the Catalent sign-on bonus, did
10 you receive any other perquisites in connection
11 with that position when you first joined on
12 November 30, 2015?

13 MS. COLWIN: Objection.

14 A. I can clarify, it's the lack of car.
15 I was entitled to a car, but I negotiated a
16 different package in lieu of a car, because I had
17 just purchased a car for another position. So I
18 declined to take the company car. Sorry, that's
19 just to clarify, because it sounded like that
20 was -- I don't recall anything else. I mean,
21 medical, right? Standard HR benefit, but I don't
22 recall anything else. I think the major issues
23 were base and bonus, which was negotiated as a
24 result -- and signing bonus. But, again, that,
25 you know, was for the purpose of paying back the

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2 Catalent signing bonus that I had to return, and
3 did return.

4 Q. Understood.

5 Was there a discrete portion of this
6 compensation package that was in lieu of the car?

7 A. I think the bonus -- well, I don't
8 know how they calculated it. I remember just
9 negotiating numbers.

10 Q. Did you receive any other benefits
11 that had a material financial value, such as, for
12 instance, an insurance policy, like a life
13 insurance policy?

14 MS. COLWIN: Objection.

15 A. I think all employees have a group
16 company life insurance policy.

17 Q. Did you receive any personal non-group
18 coverage?

19 A. No. Not that I know of.

20 Q. Did you receive any equity awards or
21 restricted stock units or anything of that nature?

22 A. No.

23 Q. Okay. Thank you.

24 Were you provided with an offer letter
25 at some point?

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2 A. Yes.

3 (Plaintiff's Exhibit 46, one-page
4 document Bates stamped DEF 011530,
5 confidential, marked for Identification, as
6 of this date.)

7 Q. I'm going to provide you with a
8 document that was previously marked as Plaintiff's
9 46. And I'll represent to you that this was a
10 document produced to us in litigation; hence, it
11 has a Bates number in the bottom right corner of
12 DEF 001530.

13 Have you seen this document before?

14 A. I don't recall seeing this document.

15 Q. Did you receive an offer letter in
16 substantially the same format as the document
17 we're looking at now, Plaintiff's 46?

18 A. I received -- I received an offer
19 letter. I think Pat Saunders would be the
20 signatory.

21 RQ MR. BERMAN: We call for production of
22 any offer letter issued to Mr. Oliva in
23 connection with his reemployment with the
24 company on November 30, 2015.

25 MS. COLWIN: Taken under advisement.

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2 RQ MR. BERMAN: We also call for the
3 production of any documents reflecting the
4 negotiation process Mr. Oliva just
5 described.

6 Q. Mr. Oliva, as part of your
7 interviewing process, you mentioned interviewing
8 with Ms. Kathryn Roche, I think you said, and with
9 Ms. Saunders.

10 Did you interview with any other MCHA
11 personnel as part of the consideration of
12 reemployment with the company?

13 A. No.

14 Q. Did you interview with any other
15 personnel at any other Mitsubishi company in
16 connection with your reemployment in this role?

17 A. No.

18 Q. After you joined the company, or
19 rejoined the company on November 30, 2015, were
20 you appointed to any corporate board positions on
21 any affiliates?

22 A. No.

23 Q. So you didn't sit on the board of any
24 Mitsubishi entities?

25 MS. COLWIN: Objection.

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2 A. No.

3 Q. I'm going to show you an exhibit
4 previously marked as Plaintiff's Exhibit 5.

5 A. Okay.

6 Q. Have you seen this document before?

7 A. It's familiar.

8 Q. Can you tell me what it is?

9 A. It's a job description of the general
10 counsel and chief compliance officer.

11 Q. Please take a moment to review it and
12 let me know if this position profile accurately
13 describes the position you were rehired into on or
14 about November 30, 2015?

15 A. Yes.

16 Q. Okay. Thank you.

17 Prior to your rehire in November of
18 2015, had you had any experience monitoring
19 corporate governance?

20 MS. COLWIN: Objection.

21 A. I can't recall for sure.

22 Q. Okay. What about --

23 A. I had experience in corporate
24 governance, but monitoring corporate governance,
25 that's what I'm struggling with.

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2 Q. Is there a distinction between those
3 two things?

4 A. There is.

5 Q. What's the nature of the distinction?

6 A. So, experience in corporate governance
7 is being able to advise about the role of Boards
8 of Directors, about what happens serving, even as
9 an acting secretary at board meetings. There's
10 lots of corporate governance activities.
11 Monitoring corporate governance is the person who
12 is responsible for the corporate governance
13 program. And I don't think I was responsible
14 prior to this position for corporate governance.
15 I did have corporate governance experience.

16 Q. Forgive me, but I know a lot less than
17 you when it comes to corporate law, so if I ask a
18 question that's foolish or it can't be answered
19 the way it's posed, please let me know and I'll do
20 my best to rephrase it.

21 But can you explain to me, what does
22 it mean to be responsible for a corporate
23 governance program? What does that entail?

24 A. For a company like Mitsubishi Chemical
25 Holdings group, that has many hundreds of

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2 affiliates, each of those separate legal entities
3 has their own Board of Directors and officers.
4 And to serve as secretary to one of those boards
5 requires a level of knowledge of how a board runs
6 and what those bylaws are.

7 But to monitor a program as a holdings
8 group means that you are able to manage all of
9 their corporate filings, what service you use for
10 their state registrations, when the group will
11 have their annual meetings. It's very different
12 to manage a number of affiliated companies and
13 control, have a level of control over making sure
14 they comport with their corporate formalities,
15 than to serve as a board member or as secretary to
16 a board, or acting secretary to a board, which
17 those experiences I had.

18 Q. Okay. Thank you for explaining that.

19 A. Sure.

20 Q. Prior to your rehire in November 2015,
21 had you participated in review and negotiation of
22 any acquisitions?

23 A. I did participate in the Medarex
24 acquisition for Bristol-Myers Squibb, and if
25 that's read more broadly, as would normally be

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2 read, divestitures also. Then at Mitsubishi
3 Chemical, the Western Lithotech divestiture, the
4 two asset sale divestitures related to Alpha
5 Therapeutic, and multiple schedules and activity
6 related to the AstraZeneca diabetes franchise
7 divestitures.

8 Q. Wouldn't those be described as
9 strategic transactions?

10 A. Strategic transactions also includes
11 other things, but those are strategic
12 transactions.

13 Q. So, which of those divestitures that
14 you mentioned was the largest transaction, in
15 terms of dollars?

16 A. AstraZeneca divestiture.

17 Q. How large was that transaction?

18 A. Six billion-dollar.

19 Q. What was your level of responsibility
20 in that transaction?

21 A. So, my level of responsibility was
22 with regard to the commercial-related
23 transactional matters and how we would get those
24 transitioned.

25 Q. So, who was responsible for the -- who

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2 was the head lawyer with responsibility for your
3 side of the transaction?

4 Does that question make sense?

5 MS. COLWIN: Objection.

6 A. My one over manager. The -- I think
7 he was the deputy general counsel at the time.

8 Q. So, was that person vested with
9 overall responsibility for the transaction?

10 MS. COLWIN: Objection.

11 A. They had a deal team, so from a legal
12 perspective, the answer is yes.

13 Q. Okay. And you reported to that
14 person?

15 MS. COLWIN: Objection. Which person?

16 MR. BERMAN: The person that he's
17 describing was the person with overall
18 responsibility for the deal.

19 Q. Perhaps, it would be easier if you
20 want to just name the individual?

21 A. That's okay. But, yes, my one over
22 manager, the head of the transactional practice
23 group, was responsible from a legal perspective
24 for the deal, and I reported in through that
25 person.

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2 Q. Was there a particular aspect of that
3 transaction that you had the overall
4 responsibility for?

5 A. Yes.

6 Q. Which portion of the transaction was
7 that?

8 A. The transfer of the commercial side
9 transactional work, transactions.

10 Q. Do you know whether there was any
11 dollar value attributed to that aspect of the
12 transaction?

13 MS. COLWIN: Objection.

14 A. I don't know.

15 Q. That was the AstraZeneca?

16 A. Yes.

17 Q. What was the next largest transaction
18 you participated in after AstraZeneca?

19 A. Medarex.

20 Q. Approximately how large was the
21 Medarex transaction?

22 A. Two billion.

23 Q. On your side of the transaction, who
24 was the head lawyer with overall responsibility
25 for the deal?

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2 A. I think it was the same person, my one
3 over manager. At that time, there was no practice
4 group model, so the organization was structured
5 differently. I reported directly to the assistant
6 general counsel.

7 As I mentioned before, at that time,
8 brand lawyers did everything related to a brand.
9 So, I don't recall there being a transactional
10 practice person. My one -- my -- I'm sorry. My
11 immediate manager was the person with -- who I
12 supported on that deal.

13 Q. With respect to the -- is it Medarex?

14 A. Medarex.

15 Q. M-E-T-A-R-E-X?

16 A. M-E-D-A-R-E-X. Medarex.

17 Q. Was there a particular aspect of that
18 transaction that you had responsibility for?

19 A. Yes.

20 Q. Which portion?

21 A. Due diligence.

22 Q. What was the nature of your
23 responsibility on the due diligence end of that
24 transaction?

25 A. Visiting, interviewing, reviewing and

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2 being prepared to integrate.

3 Q. Were there any financial advisors on
4 that transaction?

5 A. I don't recall. I'm sure there were.

6 Q. Did you have any role in selecting
7 them?

8 A. No.

9 Q. What country did that transaction take
10 place in?

11 A. The U.S.

12 Q. Were there any outside lawyers hired
13 for any part of that transaction?

14 A. Probably.

15 Q. Were you responsible for selecting
16 them or identifying them?

17 A. No.

18 Q. You mentioned integration.

19 What does that entail?

20 A. Integration is, after you purchase a
21 company, lining up the assets, the people, the
22 resources with your company, so that you have a
23 successful purchase. And integrating, or being
24 responsible for due diligence with an eye towards
25 integration, means advising the business how they

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2 will be able to do that successfully, efficiently,
3 quickly.

4 Q. Prior to rejoining MCHA, did you have
5 any experience selecting outside counsel?

6 A. Did I select outside counsel prior
7 to -- yes.

8 Q. Can you describe that process for me?

9 A. Well, I can recall at Catalent
10 selecting lawyers for -- outside counsel for
11 export control programming.

12 Q. Other than with respect to export
13 control programming, did you select any outside
14 counsel?

15 A. Yes.

16 Q. For what type of work?

17 A. Transactional work in Brazil,
18 Argentina, Australia. Probably others.

19 Q. Did you select any financial advisors?

20 A. No.

21 Q. Did you manage any outside counsel
22 prior to rejoining MCHA?

23 A. Yes.

24 Q. What aspects, or could you just give
25 me the general nature of that work?

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2 A. Transactional work, export control
3 work. Yeah, transactional is pretty broad, so
4 small transactions, big transactions, export
5 control. I think that's probably it.

6 Q. Did you, prior to rejoining MCHA, have
7 any responsibility for selecting outside counsel
8 with respect to employment law matters?

9 A. No. Both places I worked had internal
10 employment lawyers.

11 Q. Did you manage those lawyers?

12 A. No.

13 MS. COLWIN: Objection.

14 Q. Did you evaluate those lawyers?

15 A. No.

16 Q. With respect to the outside counsel
17 that you've just described, were you responsible
18 for evaluating those outside counsel?

19 A. Yes.

20 Q. Which outside counsel did you
21 evaluate?

22 MS. COLWIN: Objection.

23 A. It was Drinker Biddle at the time. It
24 was Trench Rossi Watanabe at the time. It was a
25 firm in Australia that I -- in Melbourne that I

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2 don't recall the name of, that had a joint venture
3 in China at the time. And Baker McKenzie in
4 multiple jurisdictions around signatory
5 authorities. Yeah, I don't -- I -- others
6 probably. I don't recall.

7 Q. Could you describe for me what
8 evaluating -- excuse me -- what evaluating outside
9 counsel entails?

10 A. Yeah. If you hire someone to do a
11 job, then you make sure that you get the benefit
12 of what you're paying for, in quality, in speed,
13 in efficiency, in relationship.

14 Q. Prior to being rehired at MCHA, did
15 you have any experience concerning internal audit?

16 A. Yes.

17 Q. What was the general nature of that
18 experience?

19 A. I had significant experience reviewing
20 internal audit reports, in draft form, for
21 purposes of corrective action and CAPA.

22 Q. What about with respect to human
23 resources?

24 A. What's the question?

25 Q. The same question as internal audit.

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2 MR. BERMAN: Could you please read
3 back the internal audit question.

4 (Whereupon, the requested question was
5 read back by the reporter.)

6 Q. Prior to being rehired at MCHA, did
7 you have any experience interacting with the human
8 resources function at any of your previous
9 positions?

10 A. Yes.

11 Q. What is the general nature of that
12 work?

13 A. There were multiple different issues
14 that I worked on with the employment lawyers, from
15 classification to entity, the impact of corporate
16 restructuring and entities, to independent
17 contractor, independent contractor vetting,
18 employment-related behavior issues, vendor
19 behavior related issues.

20 Q. Have you completed your response?

21 A. I think so.

22 Q. If anything else comes to mind, just
23 let me know.

24 Starting with the first of those that
25 you identified. When you use the phrase

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2 classification, what are you referring to?

3 A. So, employee classification, which is
4 how an employee is identified for purposes of
5 taxation, exempt, nonexempt, and otherwise. So,
6 it's a high -- can be a high risk area for a
7 company that has consultants and independent
8 contractors, so it's important to be aligned with
9 the employment law group to make sure that we hire
10 consultants and things appropriately.

11 Q. The second portion of your response, I
12 think you said it -- I might get the wording
13 wrong. You mentioned something about structuring
14 entities?

15 A. Yes. So, the impact on employees if
16 you restructure an organization. So, for example,
17 if you dissolve an entity and there were people
18 who were W-2 employees of that entity, what do you
19 do? How do you transition? Or in the case of
20 integration of an M&A.

21 Q. So, is it basically what happens to
22 the people in either a divestiture or an
23 acquisition?

24 A. Yes.

25 Q. You mentioned vetting independent

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2 contractors.

3 What did that entail?

4 A. So, that's similar to the
5 classification issue. Implementing systems,
6 including third-party systems, on the advice of
7 employment lawyers and working through the
8 transactional team to make sure that we had the
9 ability to -- if we were going to hire someone who
10 we identified as an independent contractor, that
11 they would actually meet the test for being
12 independent and being an independent contractor.
13 Reducing our risk.

14 Q. And then after that, did you say
15 something about vendor balance issues? What was
16 the last --

17 A. Behavior. Ven -- behavior. Both
18 internal employee and vendor employee behavior
19 issues.

20 Q. So, what type of employee behavior
21 issues would that cover?

22 MS. COLWIN: Objection.

23 Q. Do you understand my question, or
24 should I rephrase it?

25 A. I think so. Just inappropriate

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2 workplace behaviors.

3 Q. With respect to inappropriate
4 workplace behaviors, what was your role in that
5 process?

6 A. As a lawyer and a person responsible
7 for compliance, it was related to reporting and
8 advising and communicating with the employment
9 lawyers and the HR team.

10 Q. So, reporting, advising,
11 communicating?

12 A. Yeah, and encouraging people to --
13 about their resources. Those kinds of things.

14 Q. Did you have the same role with
15 respect to vendor behavior issues?

16 A. It's slightly different, because
17 sometimes I had to take a more active role in
18 communicating to the vendor, if I was the
19 transactional lawyer, or the brand lawyer,
20 contacting their compliance or their lawyer to
21 manage those issues directly.

22 Q. Have you supervised any employment law
23 litigations prior to being rehired at MCHA?

24 A. No.

25 Q. Have you been personally responsible

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2 for any employment law matters that were being
3 litigated?

4 A. Prior to rejoining MCHA?

5 Q. Yes.

6 A. No.

7 Q. Other than what you've described to me
8 so far today, did you have any other experience
9 dealing with issues pertaining to employment law
10 before being rehired at MCHA?

11 MS. COLWIN: Objection.

12 A. International experience.

13 Q. What did that entail?

14 A. Particularly understanding the
15 difference in Brazil, where I had two people who
16 reported to me. It's a very different model of
17 employment. And -- was there employment issues
18 in -- probably in other places, but that's the one
19 that sticks out the most.

20 Q. Prior to rejoining MCHA, did you have
21 any experiencing interacting with the information
22 technology function at any of your prior
23 employees?

24 A. Yes. Significant.

25 Q. What was the general nature of that

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2 work?

3 A. I was the lead transactional lawyer
4 for IT and software licensing for a period of
5 time, and I supported the chief technology officer
6 or chief information officer, I think it was CTO
7 of Bristol-Myers Squibb in two major disputes over
8 two different years.

9 Q. Did any of those disputes go to
10 litigation?

11 A. They did not.

12 Q. Prior to being rehired at MCHA, did
13 you have any experience with cost control?

14 A. Yes.

15 Q. What did that entail?

16 A. So, I had survived two reductions in
17 force at Bristol-Myers Squibb during some, I
18 guess, relatively leaner times, and I think,
19 actually, you can see from my -- from the e-mail
20 that you provided, having travel canceled and
21 those kind of things.

22 Q. Prior to being rehired at MCHA, did
23 you have any interaction with -- any direct
24 interaction with governmental agencies?

25 A. Yes.

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2 Q. What about regulatory agencies?

3 A. Yes.

4 Q. What was the general nature of your
5 interactions with governmental agencies?

6 A. The first interaction I had was
7 actually at Mitsubishi Chemical USA, and that was
8 with regard to an FDA audit of Mitsubishi Pharma
9 America, and coordinating that response.

10 I also engaged counsel -- this relates
11 to your other question -- and supervised counsel
12 at Mitsubishi Chemical USA on environmental
13 matters and the closing of a site, and working
14 with the New Jersey Department of Environmental
15 Protection.

16 And, from a regulatory perspective,
17 when I joined Bristol-Myers Squibb, they had just
18 entered a corporate integrity agreement for five
19 years. We had an on-site monitor in Judge Lacey.
20 We provided reporting. I personally provided
21 reporting on activities. So, some pretty
22 significant communications.

23 MR. BERMAN: I'm going to show you an
24 exhibit marked as Plaintiff's 47. Let me
25 know when you're done looking at the

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2 document.

3 (Plaintiff's Exhibit 47, a two-page
4 document Bates stamped MCHC-00001361 to
5 00001362, confidential, marked for
6 Identification, as of this date.)

7 MR. BERMAN: Plaintiff's 47 is a
8 two-page exhibit Bates stamped MCHC-00001361
9 to 1362.

10 Q. Have you seen this document before?

11 A. I must have. I'm a participant, at
12 least in part of it.

13 Q. Can you tell me what it is?

14 A. Yes. So this is a welcome back e-mail
15 from Ken Fujiwara saying, welcome back to
16 Mitsubishi Chemical, and I would like to make sure
17 you understand, you know, what's happening here
18 and how we've changed since you -- since you've
19 been gone.

20 Q. So, did you ultimately learn what had
21 changed during the period while you were gone from
22 the company?

23 A. Yes.

24 Q. And what had changed?

25 A. Many things.

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2 Q. What were the most important of those
3 changes?

4 MS. COLWIN: Objection.

5 Q. In your view.

6 A. The company, when I was there the
7 first time -- well, I would say probably the most
8 important thing was the focus on becoming what
9 they called a global company. I heard from both
10 very early after I rejoined. I saw information
11 and was presented about how the economy and future
12 of Japan was -- was not certain, and that they had
13 determined that they were essentially moving the
14 ship, and that they needed to really focus on
15 becoming a truly global company, both the pharma
16 side business and the chemical side business.

17 That was probably the most significant
18 change. There were multiple other changes; the
19 number of companies, the scope of work companies
20 that were inside the mix that weren't there when I
21 was there the first time. But the most
22 significant was both Tokyo, meaning chemical side
23 and Osaka meaning pharma side, communicating that
24 it was time that they had to become truly
25 globally-focused companies as opposed to, you

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2 know, focused on Japan with multiple businesses
3 around the world.

4 Q. The very top portion of the first page
5 of this document appears to be in Japanese; is
6 that correct?

7 A. It looks that way to me, but I don't
8 read Japanese.

9 Q. That was going to be my question.
10 Okay. Thank you.

11 When you first rejoined Mitsubishi at
12 the end of November 2015, and you arrived at the
13 legal department, how was the department
14 structured generally? How many employees did it
15 have?

16 A. The legal department, when I rejoined,
17 was three assistant general counsels, Kathryn
18 Roche, Jennifer Fischman and Andy Csaszar.
19 Reporting to Kathryn was Joe Sherinsky. Jennifer
20 Fischman had recently hired Stephen Rose and
21 Jordan Elbaum, plus Kelly Troccoli and Maikoo
22 Usami. I think that that's what the entire
23 department looked like at the time of rejoining,
24 from my memory. I might -- may have missed one.

25 Q. If you remember anything differently

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2 as we go, just please let me know. Okay?

3 So, how was the legal work of the --
4 should I call it the department, the legal
5 department?

6 A. Yeah, that's fine.

7 Q. How was the work of the legal
8 department allocated among the attorneys within
9 the department?

10 A. Primarily, it was on what I call a
11 client-centered base. The lawyers were
12 generalists, and they focused on their clients.
13 There was some overlap. I don't mean it to be so
14 strict. But mostly, there was a client group that
15 Kathryn supported and a client group that Jennifer
16 supported and a client group that Andy supported.

17 Q. Did Kathryn Roche support Verbatim?

18 A. Yes.

19 Q. Did she support Yupo?

20 A. I don't recall.

21 Q. Y-U-P-O?

22 A. That's the name of it, but I don't
23 recall.

24 Q. Did she support MFA?

25 A. Yes.

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2 Q. Did she support Verbatim Argentina?

3 A. Probably. I don't recall.

4 Q. Did Andy support MTPA?

5 A. Yeah. That stands for Mitsubishi
6 Tanabe Pharma America, yes.

7 Q. What about MTDA?

8 A. Mitsubishi Pharma Tanabe Development
9 America, yes.

10 Q. What about MPHVM?

11 A. MP -- oh. Yes.

12 Q. What does that stand for?

13 A. MPH is the venture capital arm of the
14 pharma business in Boston. MP Ventures -- MP
15 Healthcare Ventures, I think, is the formal name,
16 but we refer to it as MPH.

17 Q. And Andy's last name is Csaszar?

18 A. Csaszar.

19 Q. Did he support Alpha?

20 A. I don't know if Andy supported Alpha.
21 I don't recall.

22 Q. At that time when you first rejoined
23 the company in November 2015, did you have a
24 client Genix Brazil, G-E-N-I-X?

25 A. They weren't a client yet, because we

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2 hadn't closed on the deal.

3 Q. Did they subsequently become a client?

4 A. Yes.

5 Q. Who was responsible for that client?

6 A. Me.

7 MR. BERMAN: I'm going to show you a
8 document marked as Plaintiff's 48.

9 (Plaintiff's Exhibit 48, a one-page
10 document Bates stamped Fischman 000788,
11 marked for Identification, as of this date.)

12 MR. BERMAN: For identification,
13 Plaintiff's 48 is a one-page document Bates
14 stamped Fischman, F-I-S-C-H-M-A-N, 000788.

15 Q. Let me know when you're ready.

16 A. I'm ready.

17 Q. I'm showing you a one-page document
18 produced by plaintiff in this litigation, and if
19 you look on the left-hand side of the page,
20 there's a list of names there.

21 Do you recognize those names?

22 A. I do.

23 Q. Are there any that you do not
24 recognize?

25 A. No.

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2 Q. Are these clients that, at the time
3 you rejoined MCHA, were supported by Jennifer
4 Fischman?

5 MS. COLWIN: Objection.

6 A. So, this -- if I can give a little
7 explanation. This is, with due respect, sort of
8 the world according to Jennifer. This was part of
9 a conversation where I had asked Jennifer to give
10 me a list of what she perceived to be her primary
11 clients and groups, because I had, in my mind, at
12 the time to switch what we were doing from the
13 client focus to a practice group model, which is a
14 change that I had undergone, actually, at
15 Bristol-Myers Squibb, and I thought it was much
16 more efficient and effective.

17 I can say by looking at these, I think
18 other members of our legal department would take
19 objection to saying that these were Jennifer's
20 client, primary client.

21 Q. Could you explain to me the
22 distinction between a client focus model and a
23 practice group model?

24 A. Of course. So, in a client-focused
25 model, I would say Verbatim is my client and I am

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2 their generalist, and I handle their contract work
3 and I handle their employment work, and I hire
4 outside counsel for them, and I advise them on
5 their real estate matters and their litigation.

6 In a practice group model, we switch
7 our focus to subject matter and we become subject
8 matter experts, if we're not already. And that's
9 more efficient, because all employment-related
10 matters, whether they're for Verbatim or for Yupo,
11 go to the subject matter expert in employment law,
12 similar to what I think you're familiar with in a
13 law firm. You give the experts of that area that
14 work, whether it's one client or another.

15 And that's more efficient not only
16 because they become -- they can develop their
17 skill and truly become experts in that area if
18 they're not already, but the advice is better,
19 faster, and it operates more like a team. So, one
20 client doesn't have one person. And we would
21 consistently get that question. Who may I call?
22 Who should I call for this? And my answer
23 routinely over and over was, you should be able to
24 call anyone on our team. Anyone on our team will
25 provide you with triage and help immediately, but

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2 then get it to the right person, get it to the
3 practice group. And that was the experience I had
4 at -- in another place, too. So, transitioning
5 from this is -- MCPD is my client, to MCPD is our
6 client, employment law goes here and litigation
7 goes here and patent goes here.

8 Q. So then, in your view, under the
9 practice group model, would individual attorneys
10 no longer be generalists?

11 A. No. Because we're such a small group,
12 we have to maintain that generalist position. But
13 also, what I had mentioned in communicating to the
14 clients, in order to provide triage service, our
15 department is -- is very experienced people,
16 because it's very small, and whatever issue comes
17 up today, I need there to be a certain level of
18 understanding, so that if a person calls any one
19 of us, we can help them immediately and then get
20 them to the right person. So, yeah, there still
21 remains a level of being a generalist.

22 Q. So, was there a reallocation of work
23 as part of a shift from a client-focused model to
24 a practice group model?

25 A. Yes.

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2 Q. So, how did the responsibilities of
3 the lawyers in the department change as a result
4 of that?

5 A. Okay. So, what I tried to do when I
6 first rejoined was meet with every single person
7 in one-on-one meetings every week. It was
8 burdensome, because, although it's a small group,
9 that's still a lot of one-on-one meetings.

10 But what I wanted to understand was,
11 what is the skill set of Joe Sherinsky or Stephen
12 Rose? So that, as we moved to the practice group
13 model, I not only understand where they are, but
14 what room there is for development, and then ask
15 them what's their interest. And one, I think,
16 really good example of that is with Joe, who's a
17 patent lawyer, who's doing transactional work, who
18 then ultimately, based on his skill and
19 experience, because a -- you know, a litigate --
20 the lead of the litigation group, lead of the
21 litigation practice and managing trademarks. And,
22 yes, he has to review contracts sometimes as a
23 generalist. But, primarily, his focus is
24 elsewhere, that matches his skill set there.

25 Q. Okay. So, as part of this process,

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2 did you come to understand or have an
3 understanding of the skill set of each attorney?

4 MS. COLWIN: Objection.

5 A. I think reasonably, reasonably enough,
6 yeah. That was my goal. I tried to understand
7 what they had worked on, what they had done, and
8 what they wanted to do. For me, that was probably
9 even more important, because they weren't hired
10 into the practice group model, they were hired
11 into a generalist model. And if I was going to
12 change it, I wanted to be respectful that this
13 would be something that would be good for their
14 career, that I could help lead them to where they
15 would want to go.

16 Q. So, as part of that process, did you
17 have one-on-ones with Ms. Fischman?

18 A. Yes.

19 Q. Did they occur roughly every week?

20 A. Yes.

21 Q. Did you come to some understanding as
22 to what her skill set was comprised of?

23 A. Generally speaking.

24 Q. What understanding did you come to
25 about her skill set?

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2 MS. COLWIN: Objection.

3 MR. BERMAN: You can answer.

4 A. That she was heavy on transactional
5 work and was probably the one who handled the most
6 employment-related matters. Those were the two
7 primary areas.

8 Q. Did you come to any conclusion as to
9 the existence or lack thereof of any gaps in her
10 skill set?

11 MS. COLWIN: Objection.

12 A. My conversations with Jennifer about
13 her development were really encouraging her to
14 figure out what the right role and fit would be
15 for her. And I tried -- this is actually a
16 document that's related to that. So, who are the
17 companies that you support? What kind of matters?

18 And I went through demand management
19 process. I'm trying to really understand how to
20 restructure, and I invited Jennifer to have those
21 conversations with me many, many times, and she
22 didn't. She did not communicate with me the areas
23 of focus or what the future position could or
24 should look like, in her opinion.

25 So, it's hard for me to answer that

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2 because I think I understood that she had a lot of
3 experience in transactional work, probably a
4 significant amount of experience in employment
5 work, but I was missing a key piece, which was
6 where does she want to go? What does she want to
7 work on? How does she want to develop herself?
8 What does her next -- you know, the next few
9 months, years look like for her as she develops
10 and stay -- you know, stays in or grows in either
11 her role or the next role?

12 Q. So, when you're having these
13 conversations with Ms. Fischman, you were aware
14 that she had previously been demoted, correct?

15 MS. COLWIN: Objection.

16 A. I know that she was returned to her
17 previous position after the acting function.

18 Q. Okay. So, we don't have to put a
19 label on that, right? We can just -- we can use
20 your word return, that's fine.

21 A. Okay.

22 Q. You knew that she had previously been
23 in the acting general counsel and chief compliance
24 officer of MCHA, correct?

25 A. Yes.

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2 Q. Did you have any discussions with
3 Ms. Costa about returning Ms. Fischman to her
4 prior role of assistant general counsel?

5 A. Well, just as I mentioned, that during
6 the interview process, Donna had kind of expected,
7 or maybe wasn't so sure that Jennifer would stay
8 after being returned, but that, if she did, that
9 could be good for me.

10 Q. Okay. Understood.

11 So then, after you had rejoined the
12 company, did you have any discussions with
13 Ms. Fischman about the fact that she had been
14 returned to her role at AGC from the prior role --
15 sorry, AGC is maybe ambiguous in this context.

16 Did you have any --

17 MR. BERMAN: Withdrawn.

18 Q. Did you have any discussions with
19 Ms. Fischman after you rejoined MCHA in November
20 2015 concerning the fact that she had been
21 returned from the position of acting general
22 counsel and chief compliance officer to the
23 position of assistant general counsel?

24 MS. COLWIN: Objection.

25 A. Yes.

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2 Q. Can you describe those conversations to
3 me?

4 When did they first take place?

5 A. I can tell you that the first
6 conversation I had with Jennifer was on my first
7 day. I made it a point, on purpose, to go into
8 her office, not call her into my office, but to go
9 into her office and to communicate with her in an
10 open way to say, I know this can't be easy for
11 you, but we're on the same team, and I want you to
12 be successful here, and I don't really care about
13 what happened before. We start today together.
14 We have something to do. I have a lot of work. I
15 understand that you can help me with that, and I'm
16 looking forward to that.

17 I don't remember if those were exactly
18 the words, but that's the sentiment at the time.
19 And we had several conversations after that, when
20 she told me about how difficult it was to have had
21 that job and not have that job anymore. There
22 were conversations we had later where she confided
23 in me that she was unhappy at the company, that
24 she was unhappy with her role.

25 Q. Let's just break that up.

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2 When you first approached her on your
3 first day, what was the nature of her response to
4 your overture?

5 A. It was --

6 MS. COLWIN: Objection.

7 Q. What did she say?

8 A. It was inappropriate and aggressive.

9 Q. What did she say or do that led you to
10 that conclusion?

11 A. She was -- she offered me -- I think
12 you probably have some document related to that, a
13 note about it. She offered me a blister pack of
14 gum, where some of the blisters were open, and in
15 one of them was her already chewed gum. Now,
16 meeting with my new boss, I would never in a
17 million years think that that would be an
18 appropriate way to meet for the first day and say,
19 would you like some gum, in an aggressive and kind
20 of disgusting way. It's inappropriate and it set
21 the tone. But I was patient with her. I didn't
22 call her out on it. I just said, no, thank you,
23 and we returned to our conversation. That's the
24 nature of the first meeting. It was aggressive.

25 Q. Did she use any aggressive words with

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2 you during that conversation?

3 A. I don't think so.

4 Q. Did she say anything to you that was,
5 in your view, unprofessional during that
6 conversation?

7 A. I don't recall.

8 Q. So, setting aside your interpretation
9 of her proffer of the gum to you, was there
10 anything other than that that you thought was
11 aggressive in that meeting?

12 MS. COLWIN: Objection.

13 A. I might have made a note if there was,
14 but I don't recall.

15 Q. Do you know whether Ms. Fischman made
16 a habit of chewing gum?

17 MS. COLWIN: Objection.

18 A. I don't know her habits of gum
19 chewing.

20 Q. Other than the one time that she
21 offered the gum to you, did you ever see her with
22 gum at any subsequent point?

23 A. Yes, I think so.

24 Q. Did you ever see her with a blister
25 pack that had been opened at any point?

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2 A. No.

3 Q. So, do you know whether she, as a
4 routine course, put the used gum back into the
5 blister pack?

6 MS. COLWIN: Objection.

7 A. I don't know, but that's not really
8 all that important for when you're meeting for the
9 first day with your new boss.

10 MR. BERMAN: Okay. I object to the
11 portion of your response that was
12 nonresponsive to my question, but we can
13 move on.

14 THE WITNESS: Okay.

15 Q. Now, you mentioned that, later on, you
16 had additional conversations with Ms. Fischman and
17 that she indicated she was unhappy.

18 When did she indicate that?

19 A. I don't remember the time. I may have
20 notes about it in one-on-ones or notes to myself,
21 but...

22 Q. Okay. This is, I think, the second or
23 more time that you mentioned having notes that you
24 took.

25 A. Uh-huh.

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2 Q. Was it your regular practice to take
3 notes in your meetings?

4 A. Yes.

5 Q. Did you take notes during all
6 significant meetings you had with personnel under
7 your supervision?

8 MS. COLWIN: Objection.

9 A. Yes.

10 Q. Did you take notes at all meetings you
11 had with clients?

12 A. No.

13 MS. COLWIN: Objection.

14 Q. So, what would determine whether you
15 took notes with clients or not?

16 A. I don't have an answer to that. I
17 don't know. I took notes or I didn't. The model
18 for notes of the people who I supervised were, we
19 had one-on-one meetings, and I used e-mail as the
20 tool to keep those notes, because I'm essentially
21 paperless. It's not possible to be entirely
22 paperless, but I'm essentially paperless, and I
23 would write an e-mail to myself, usually titled
24 one on one, or Jennifer one on one, or Joe one on
25 one, and document for myself, and so that I could

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2 communicate with them the next week about
3 follow-up, the items we talked about. But I also
4 wrote notes -- I write notes to myself that are
5 for, you know, my eyes or for my recollection,
6 those kinds of things.

7 Q. So, with respect to your meetings with
8 Ms. Fischman, did you write notes to yourself for
9 each of those meetings?

10 MS. COLWIN: Objection.

11 A. Very likely, yes.

12 RQ MR. BERMAN: We call for the
13 production of any notes not previously
14 produced pertaining to Mr. Oliva's
15 conversations with Ms. Fischman.

16 MS. COLWIN: Taken under advisement.

17 MR. BERMAN: Thank you.

18 Q. With respect to client meetings, did
19 you also use e-mail as a tool on the occasions
20 where you took notes?

21 A. I think you asked me that before, and
22 I think probably. I think I do have some, but
23 it's a different format. Usually, if I'm meeting
24 with a client, I'm somewhere else. I'm not
25 sitting in my office for these one-on-ones or --

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2 where I might be able to go back and write. So,
3 probably, but it might not be convenient to do
4 that.

5 Q. So, on the occasions where you were
6 somewhere else outside the office and you had
7 meetings that you wanted to be able to revisit at
8 a future point, did you have some procedure you
9 would follow in order to do that?

10 MS. COLWIN: Objection.

11 A. No, no procedure.

12 Q. Okay. With respect to client meetings
13 that you had in the office, did you have some
14 procedure you followed in order to memorialize
15 your conversations?

16 A. If we met in the New York office, I
17 would likely, after the meeting, go back to my
18 office and write either to myself or to them,
19 often to them, as we just discussed, that kind of
20 thing.

21 Q. So you're referring to an e-mail?

22 A. Right.

23 Q. And if you were writing to yourself,
24 would that also be an e-mail?

25 A. Yes.

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2 Q. So you didn't maintain legal pads or
3 something like that, that you wrote on?

4 A. No.

5 Q. Did other attorneys in the office
6 maintain those?

7 A. I don't know.

8 Q. Did you ever see Jennifer Fischman
9 maintain legal pads in your interactions with her?

10 MS. COLWIN: Objection.

11 A. Yes.

12 Q. Ultimately, when Ms. Fischman departed
13 the company, do you know if the company retained
14 any of her legal pads?

15 A. I think so.

16 RQ MR. BERMAN: We call for the
17 production of any legal pads that were
18 utilized by Ms. Fischman during her
19 employment with the company, to the extent
20 they haven't been produced yet.

21 MS. COLWIN: Taken under advisement.

22 MR. BERMAN: Thank you.

23 Q. After you rejoined the company in
24 November of 2015, did you rebalance the
25 assignments that Ms. Fischman was responsible for?

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2 A. Yeah, that was certainly my intention.
3 I wanted Jennifer to be a part of that process,
4 and that was a struggle, but I think we did make
5 some progress before she left.

6 Q. Okay. So was her workload changed as
7 a result of you rejoining the company?

8 A. Yes.

9 Q. How was it changed?

10 A. Well, some things I -- she was the
11 acting general counsel and chief compliance
12 officer before I joined, so there was a host of
13 things that she had no more responsibility for at
14 all. And then, with regard to certain clients,
15 things were either moved or I took, but I don't --
16 yeah.

17 Q. So I understand there's a couple of
18 things happening at the same time in November,
19 right? You're rejoining the company and she is
20 transitioning from one position to another,
21 correct?

22 A. Yes.

23 Q. So with respect to Ms. Fischman's
24 duties and responsibilities changing, what I'm
25 interested in are any changes that you made to her

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2 duties and responsibilities.

3 Did you make any changes to
4 Ms. Fischman's duties and responsibilities when
5 you rejoined the company on or around November 30,
6 2015?

7 MS. COLWIN: Objection.

8 A. I don't recall.

9 Q. Did you direct Ms. Fischman to
10 transition any of her projects to you?

11 A. I don't recall. Likely, corporate
12 governance matters, secretary activity, the
13 compliance-related program. It was probably
14 understood, as opposed to me directing her to do
15 it, but we probably had conversation. But, again,
16 at the very instant I rejoined, I didn't have in
17 my mind to change the model. I was there to
18 observe and see what was working and make the
19 right -- implement the right model, so it's a
20 little hard for me to say at that point.

21 But I don't recall specific direction
22 to move this from here to there.

23 Q. Okay. So when you rejoined the
24 company in your position as GC/CCO, can you
25 describe for me the balance in your duties between

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2 performing legal work of your own and supervising
3 the work performed with others -- by others?

4 MS. COLWIN: Objection.

5 A. I would say, in the first instance,
6 the majority of the work was understanding where
7 the work was coming from, what kind of work, and
8 who was doing it, because the department was not
9 at a loss. There was no gap. Someone didn't
10 leave and that work needed to be reshuffled.

11 So it was mostly about learning the
12 team and the dynamic and the skill set, and then
13 trying to figure out where people wanted to go,
14 like I said, that was really important to me on
15 the development side, and then implementing a
16 structure.

17 So I think in the first instance, the
18 majority of the work for me was supervisory,
19 strategic, definitely strategic, and, probably
20 more than those two, was relationship with
21 clients. That was very critical from -- that was
22 a direction I received from Donna, was it was
23 critical for me to make sure that the, you know,
24 affiliates in the U.S. knew who I was, especially
25 if they didn't remember me from the last time, I

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2 was different people, and understood what was --
3 you know, what was happening.

4 Q. How much time does that process take,
5 the relationship-building portion of it?

6 MS. COLWIN: Objection.

7 A. I think I spent the majority of my
8 first six months on these issues. That process
9 never ends. Relationship is absolutely key to the
10 role of general counsel. It is critical to the
11 role of general counsel.

12 Q. Why is it critical to the role of
13 general counsel?

14 A. I communicate to my team often that,
15 when someone calls their lawyer, they want their
16 lawyer to tell them that they're going to be okay.
17 They may not even understand what their lawyer is
18 talking about. They may not be able to judge
19 whether the legal advice is good. What they want
20 is to make sure that they can trust their lawyer,
21 that their lawyer understands what they're saying,
22 that their lawyer says, I got your back, that I'm
23 on your team, that you're going to be okay, and
24 that's what I want to engender in my team.

25 So keeping and developing and

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2 maintaining those relationships is absolutely
3 critical for the success of the department, every
4 lawyer, but definitely the general counsel.

5 Q. Okay. And is it fair to say that it
6 takes a substantial length of a relationship in
7 order to build that level of trust that you
8 described?

9 MS. COLWIN: Objection.

10 A. It depends. I think it's logical to
11 say that trust doesn't develop immediately.
12 That's a certain. But there are things you can do
13 to make sure that clients understand and trust
14 you; like coming through on your -- on your
15 promises, right? You can set a goal and you can
16 meet a goal. You can communicate that you will
17 get back to them, and you do. You can stay in
18 contact. You can approach them proactively.
19 There are a lot of things that you can do to make
20 that process shorter.

21 Q. So when you rejoined the department,
22 you described various attorneys to me. I just
23 want to ask you if you recall now. Do you know
24 what position Ms. Roche was in at the time?

25 A. Assistant general counsel.

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2 Q. And Ms. Fischman was also an assistant
3 general counsel?

4 A. Yes.

5 Q. Is it the same position?

6 A. Yes.

7 Q. Were their functions and
8 responsibilities the same or different?

9 A. Well, they were both generalists, but
10 Kathryn is also a patent lawyer.

11 Q. And then with respect to Mr. Csaszar,
12 what was his role?

13 A. He was primarily focused on the
14 pharmaceutical business.

15 Q. Was he also an assistant general
16 counsel?

17 A. Yes.

18 Q. So there were three assistant general
19 counsels at the time?

20 MS. COLWIN: Objection.

21 A. Yes.

22 Q. And then you had Mr. Sherinsky?

23 A. Yes.

24 Q. What was his role?

25 A. Joe, at the time I rejoined, was a

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2 patent lawyer, who was also a generalist. He
3 supported, primarily, one of the list -- one of
4 the deals on the companies on Jen's list here,
5 MKIC. I think he was originally hired for the
6 patent portfolio related to MKIC, but I don't
7 recall because I wasn't there.

8 Q. Have you completed your response?

9 A. Yes.

10 Q. At the time you rejoined, was he also
11 an assistant general counsel?

12 A. No.

13 Q. What was his title? Was he a
14 corporate counsel?

15 A. Corporate counsel, I think.

16 Q. And Mr. Rose, what was his title?

17 A. Counsel or corporate counsel.

18 Q. And Jordan Elbaum, what was his title?

19 A. Same. Corporate counsel, I think.

20 Q. When you first rejoined the company,
21 how was Ms. Fischman's performance?

22 Did she perform up to your
23 expectations at the time that you rejoined the
24 company?

25 MS. COLWIN: Objection.

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2 A. Well, not with regard to the -- the
3 tone and the behavior. But I didn't have any
4 significant concerns around the content of her
5 legal advice.

6 MR. BERMAN: As it's 12:26 now, I'm
7 going to suggest we take our lunch break.
8 How much time would you like?

9 MS. COLWIN: We can take 45 minutes,
10 like the last time.

11 (Luncheon recess taken 12:26 p.m. to
12 1:23 p.m.)

13 MR. BERMAN: Back on the record.

14 Q. Mr. Oliva, I asked you some questions
15 earlier today about your discussions with
16 Ms. Costa prior to being rehired in November 2015.

17 As part of those discussions with
18 Ms. Costa, was there any contemplation by either
19 of you of acting in a provisional basis for some
20 period of time when you rejoined the company?

21 MS. COLWIN: Objection to form.

22 A. No.

23 Q. So there was no discussion about any
24 acting role when you had rejoined the company,
25 correct?

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2 MS. COLWIN: Objection.

3 A. No.

4 Q. No, there was no discussion?

5 A. There was no discussion.

6 Q. Okay. Thank you for clarifying that.

7 Earlier today, do you recall
8 mentioning that there was some issue with
9 Ms. Fischman's tone and behavior?

10 A. Yes.

11 Q. Other than the incident with the
12 chewing gum that you described, are there other
13 incidents that fall within that category?

14 MS. COLWIN: Objection.

15 A. What's the time frame?

16 Q. The time frame would be from the time
17 that you rejoined the company in November of 2015,
18 up until January 30, 2017.

19 A. Yes.

20 Q. When was the first of those incidents?

21 A. I don't recall.

22 Q. Do you recall the nature of it?

23 A. The first -- apart from the -- you
24 said apart from the first day?

25 Q. Correct.

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2 A. No, I don't recall. But I...

3 Q. So there were more than one incident?

4 A. Yes.

5 Q. Do you recall the general nature of
6 any of those incidents?

7 A. Yes.

8 Q. How many can you recall?

9 A. I can recall -- I can recall several.
10 I recall Jennifer being very inappropriately loud
11 in the office. I recall Jennifer not
12 understanding the cultural dynamic in a meeting.
13 I recall a confrontation with Jennifer. I recall
14 Jennifer being -- having an inappropriate and
15 curious reaction to not being invited to
16 something. I can expound on all of these, but you
17 asked for the number. I don't know the number,
18 but there are many.

19 Q. Okay. So you just listed four.

20 Are there more?

21 A. Probably.

22 Q. Do you recall more than those four at
23 this time?

24 A. I may have written notes about them,
25 but I don't recall.

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2 Q. Sitting here today, if you should
3 recall any additional ones, will you please let me
4 know?

5 A. Sure.

6 Q. So with respect to the first of those,
7 you described an incident where Ms. Fischman was
8 inappropriately loud?

9 A. Yes.

10 Q. Can you provide any additional detail?

11 A. Yes. So there was a potential
12 antitrust-related issue at a client group, and I
13 called certain members, including Jennifer, to my
14 office to discuss it and to manage how we would
15 handle it. And, upon hearing the issue, Jennifer
16 yelled, literally yelled, oh, my God, they're
17 going to jail. Although the door was closed,
18 that's an incredibly inappropriate response. That
19 was the first one.

20 Q. Okay. Are there any more details that
21 you can recollect about that meeting, as you sit
22 here?

23 A. Not without divulging any
24 privileged-related information.

25 Q. To be clear, I have no interest in any

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2 privileged communication that you have either on
3 your own with your counsel or on behalf of any
4 other entity or person you represent, or that you
5 have a potential privilege.

6 The antitrust matter that you just
7 referenced, was that a civil matter?

8 A. I decline to answer that question on
9 privilege.

10 Q. Okay. With respect to -- not with
11 respect to that matter in particular, but with
12 respect to antitrust matters in general, are any
13 antitrust matters civil and not criminal? Are
14 there some that fall into the civil category?

15 A. Yes.

16 Q. Are there some that fall into the
17 criminal category?

18 A. Yes.

19 Q. And of those antitrust matters that
20 fall into the criminal category, do any of them
21 have sentences which could include jail time
22 connected to them?

23 A. Yes.

24 Q. All right. With respect to the second
25 incident that you described as, I'm paraphrasing,

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2 not understanding cultural dynamics in a meeting,
3 can you provide me with any additional detail on
4 that incident?

5 A. Yes. I was actually pretty surprised
6 that, when we met with executives visiting from
7 Japan, that Jennifer either did not know, nor did
8 not respect the culture of the organization at the
9 table, who sits where, and the kind of ceremony
10 that precedes it. She took her spot, and
11 seemingly did not care. And when I communicated
12 to her about that afterwards, her response was,
13 we're in America, not Japan. Something like that.
14 I'm not quoting.

15 Q. And just to be clear, because I'm not
16 familiar with Japanese culture, could you please
17 describe to me the general nature of the cultural
18 ceremony you described?

19 A. Of course. So, when you have business
20 guests from Japan, you start, typically, with a
21 business card ceremony and appropriately handing
22 your business cards to each other, and there is
23 some -- there are some kind of rules or guidance
24 around how to do that. And then, what I'm
25 particularly talking about in this case was where

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2 people sit. So, the position of power, so to
3 speak, or the honorary position, in a U.S. company
4 it's usually the head of the table, we think of it
5 as the head, but that's not the case in Japan.
6 It's usually the center of the table. The two
7 centers are the heads on opposing sides, with the
8 highest ranking people near them. And that's the
9 position of honor or power.

10 And so usually what happens,
11 especially for people who are culturally sensitive
12 to working with the Japanese, you go into the room
13 and you wait for there to be kind of an
14 arrangement of where people should sit, and
15 usually one person, and it may not be the most
16 high ranking, it may be a more junior person who
17 knows the rules, will kind of invite people to sit
18 in certain spots.

19 And I would have expected, after so
20 many years, that Jennifer knew. So my only
21 assumption would be that she didn't care, which is
22 why I asked her, why, what was that? And she
23 said, we're not in Japan.

24 Q. Can you describe for me where within
25 the time period that incident took place,

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2 approximately? Was it closer to when you first
3 arrived or was it closer to the end of
4 Ms. Fischman's employment?

5 A. It was closer to when I first arrived.

6 Q. During your first period of employment
7 at MCHA, in connection with your law school and
8 post-law school experience, when you were part of
9 the MCHA or the predecessor company's legal
10 department, during that period of time, were these
11 ceremonies that you just described observed within
12 office?

13 A. Yes.

14 Q. Was the business card ceremony
15 observed within the office at that time?

16 A. Yes. It's not a Mitsubishi principle.
17 It's Japanese business culture.

18 Q. Okay. Thank you for clarifying.

19 But that aspect of the Japanese
20 culture was observed within MCHA during the first
21 period of employment you had with the company?

22 A. Yes.

23 Q. And its predecessor, I guess? Okay.

24 And what about this ceremony of who
25 sits where, was that similarly observed at that

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2 time?

3 A. Yes.

4 Q. Did you issue Ms. Fischman any kind of
5 disciplinary notice in connection with that
6 instance?

7 MS. COLWIN: Objection.

8 A. I just spoke to her about it and asked
9 her what it was.

10 Q. You spoke --

11 A. I didn't provide her with a warning
12 or...

13 Q. Did you consider that conversation to
14 be disciplinary in nature?

15 MS. COLWIN: Objection.

16 A. I don't consider it to be disciplinary
17 in a formal way, but it's certainly a coaching
18 opportunity.

19 Q. Okay.

20 A. Or at least clarifying, trying to
21 understand what she was thinking.

22 Q. Okay. Thank you.

23 With respect to the third tone and
24 behavior incident you described as a
25 confrontation, can you provide me with any

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2 additional details on that?

3 A. Yeah. So there was a case for a
4 client which Jennifer described as a trade secret
5 case, but also had a more substantial
6 antitrust-related, and when I had communicated
7 that my major concern in that case was the
8 antitrust concern, although the trade secret is
9 important, Jennifer yelled at me, you need to get
10 off of that. And I was pretty shocked that that
11 was her reaction. And then I coached her back
12 that, no, I don't need to get off that, she needs
13 to attend to it, because that's really serious,
14 that's the kind of issue that she should be paying
15 attention to.

16 And when I explained it carefully to
17 her, it was clear that she was wrong on the
18 subject matter and inappropriate in her -- in her
19 mannerism, in her communication, her tone.

20 Q. Have you told me everything you
21 recollect about that incident now?

22 A. Same, without disclosing any -- and I
23 know you're going to say you don't intend me to,
24 but, without disclosing any privileged
25 information, yeah, that's everything.

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2 Q. Okay. And then the fourth incident
3 you described is an inappropriate reaction to not
4 being invited.

5 Can you tell me about that incident?

6 A. Yes. We -- Mitsubishi Chemical group
7 owned a company called Lucite International, which
8 you may have heard of. Lucite operated
9 independently, although it was owned, and they had
10 their own general counsel. They did not use MCHA
11 for their services. I was trying to bridge the
12 gap with that company, and offer our services, and
13 have them pull into the fold a little bit more,
14 because I also understood and had heard that we
15 had a strategy that we were going to start to
16 integrate companies, and, like I mentioned, become
17 one in a more global company, as opposed to the
18 holdings model.

19 And so I had a meeting in New York
20 with the general counsel of Lucite. Her name is
21 Pauletta Brown. And when I came back and met with
22 Jennifer, she expressed to me in a kind of a -- I
23 don't know -- I can only describe it as bizarre or
24 hurt way that she was very upset that she wasn't
25 invited to that meeting. But Jennifer had no

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2 business being at that meeting. She had no
3 business with Lucite or Pauletta Brown. She
4 didn't even really know why I was meeting with
5 them. And I tried to communicate to her that she
6 didn't miss anything, she wasn't being left out of
7 anything. It doesn't make any sense that she
8 would be at that meeting. But her reaction to not
9 being in that meeting was curious, at best. Odd.
10 More like odd.

11 Q. Okay. Have you told me everything
12 that you can recall about that incident, apart
13 from any privileged information?

14 A. Yes.

15 Q. With respect to the incident about
16 Ms. Fischman allegedly being inappropriately loud,
17 did you make any notes contemporaneous with that
18 event?

19 MS. COLWIN: Objection.

20 A. I don't think I made any notes on that
21 issue because of my concern around underlying
22 privilege.

23 Q. With respect to the second incident
24 about the cultural dynamics in a meeting, did you
25 make any notes concerning that incident?

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2 A. I think I did.

3 Q. And, to the best of your knowledge,
4 those have been provided to your counsel?

5 A. Yes.

6 Q. And then, with respect to incident
7 three, which you described as the confrontation,
8 did you make any notes pertaining to that
9 incident?

10 A. I think I did.

11 Q. To the best of your knowledge, have
12 those been provided to your counsel?

13 A. Yes.

14 Q. With respect to the fourth incident,
15 involving Lucite International, did you make any
16 notes of that incident?

17 A. I think I did.

18 Q. To the best of your knowledge, have
19 those been provided to your counsel?

20 A. Yes.

21 RQ MR. BERMAN: To the extent not
22 previously produced, we call on defendants
23 to produce those notes.

24 MS. COLWIN: Taken under advisement.

25 MR. BERMAN: Thank you.

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2 Let the record reflect that I'm
3 providing the witness with a copy of a
4 document previously marked as Exhibit 3.
5 And I have copies.

6 Q. Mr. Oliva, have you seen this document
7 before?

8 A. Yes.

9 Q. Are you generally familiar with its
10 contents?

11 A. Yes.

12 Q. Are you aware that Ms. Fischman is
13 making claims alleging that she was treated
14 disparately by defendants because of her gender?

15 A. Yes.

16 Q. So I'd like to turn your attention to
17 page 13 of her complaint, and I'd like to ask you
18 some questions about Ms. Fischman's allegations in
19 this portion of the document. So I'm commencing
20 with paragraph 64. Actually, let's skip 64 and
21 move on to 65. Pardon me.

22 In paragraph 65, this is the First
23 Amended Complaint. The First Amended Complaint
24 alleges that you were permitted to communicate
25 directly with Mr. Fujiwara and Mr. Sakaguchi

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2 immediately upon being rehired into the general
3 counsel position.

4 So my first question for you is, upon
5 your rehire in November of 2015, were you
6 permitted to communicate directly with
7 Mr. Fujiwara?

8 MS. COLWIN: Objection.

9 A. Yes. And I had known Ken probably
10 since 2003.

11 Q. Okay. And did you, in fact,
12 communicate with him directly?

13 A. Yeah. You provided an e-mail before
14 that said welcome.

15 Q. But, in general, did you communicate
16 with him directly?

17 MR. FORTINSKY: Objection.

18 A. Yes.

19 Q. I can ask it a different way.

20 Were there other instances where you
21 communicated with Mr. Fujiwara directly after
22 being rehired?

23 MS. COLWIN: Objection.

24 A. Yes.

25 Q. After you were rehired in November of

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2 2015, did you communicate directly with
3 Mr. Sakaguchi?

4 A. Yes.

5 Q. Turning now to paragraph 68 on the
6 next page. Page 14.

7 Do you know whether Mr. Yoshisato was
8 the subject of an employment law investigation by
9 employees of MCHA?

10 MS. COLWIN: Objection.

11 A. It's before my time at the company or
12 after my time, depending how you look at it, but I
13 know of the issue.

14 Q. When you say you know of the issue,
15 what does that mean, again without getting into
16 any privileged communications?

17 A. I know that there was an
18 investigation. I know that Yoshisato-san was the
19 president. I know there was another member of the
20 depart -- of the company, Joe Morano, with -- who
21 I never met. I don't know the details or the case
22 report or anything like that.

23 Q. Do you know whether Mr. Yoshisato was
24 one of the subjects of the investigation?

25 A. I believe so.

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2 Q. All right. Prior to -- let me think
3 of a better way to ask this question.

4 During the period after you left
5 Mitsubishi, during your first time working for the
6 company, and you rejoining the company later,
7 right? So I'm talking about the intervening
8 period between your two employments at Mitsubishi.

9 During that intervening period, were
10 you ever responsible for conducting internal
11 investigations at any of your other jobs?

12 MS. COLWIN: Objection.

13 A. Yes.

14 Q. Without revealing any privileged
15 communications, what was the nature of your role
16 in connection with any such investigations?

17 A. Both participating in and leading and
18 assisting someone, a whistleblower-style person,
19 in communicating around potential violations of
20 law and policy, including anticorruption, those
21 kinds of things.

22 Q. Approximately how many investigations
23 did you participate in?

24 MS. COLWIN: Objection.

25 A. I recall four independently. There

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2 may be more.

3 Q. Was there any particular way in which
4 you learned how to conduct investigations?

5 A. We -- I was very close with the
6 compliance department, and also the government and
7 litigation -- government investigation litigation
8 person, so by their modeling at Bristol-Myers
9 Squibb.

10 Q. So did you receive training at
11 Bristol-Myers Squibb concerning how to conduct an
12 investigation?

13 A. Not formal training.

14 Q. But informally, you were trained?

15 A. Informally, I observed.

16 Q. So you learned by observing?

17 A. Yes.

18 MS. COLWIN: Objection.

19 Q. And then, as a result of your learning
20 through observation, did you formulate any
21 particular protocol for how an investigation
22 should be conducted?

23 MS. COLWIN: Objection.

24 A. Yes.

25 Q. In your role as general counsel after

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2 you were rehired, was that protocol in effect?

3 A. Yes.

4 Q. Was that protocol ever reduced to
5 writing?

6 A. No. But I can say I think the -- no.

7 Q. After you were rehired by the company,
8 was Mr. Yoshisato still affiliated with the
9 company or with any of the affiliates of the
10 company?

11 A. Yes.

12 Q. Okay. Which one?

13 A. I think he was at MCHC.

14 Q. Do you know what his capacity at MCHC
15 was at that time?

16 A. I'm not sure. I think he might have
17 worked in the audit function, internal audit
18 function.

19 Q. Do you know whether he was the
20 executive officer of the company?

21 A. I don't know.

22 Q. Do you know if he was promoted after
23 that investigation for which he was a subject of?

24 A. I have no idea.

25 Q. After you were rehired into MCHA, did

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2 you --

3 MR. BERMAN: Withdrawn.

4 Q. After you were rehired into MCHA, did
5 you have access to the personnel files of the
6 attorneys you supervised?

7 A. Did I have access to the personnel
8 files? I probably could have requested them from
9 the HR person.

10 Q. After you had been rehired by MCHA,
11 did you ever have any discussions with Ms. Costa
12 about the reasons why Ms. Fischman was reassigned
13 from acting general counsel to her previous
14 position of assistant general counsel?

15 MS. COLWIN: Objection.

16 A. Not in detail. We talked about tone
17 and behavior. We talked generally speaking, but
18 not very specifically about a particular issue --
19 well, maybe there were a couple of particular
20 issues. I do recall Donna telling me about the
21 meeting -- there was a meet about Ciro about a
22 go/no go decision. Yeah, so there were some
23 instances that she told me about.

24 Q. Do you know whether any other
25 individuals besides Ms. Costa were involved in

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2 that decision?

3 MS. COLWIN: Objection.

4 A. In what decision?

5 Q. In the decision to reassign

6 Ms. Fischman.

7 MS. COLWIN: Objection.

8 A. I don't know.

9 Q. I'm sorry?

10 A. I don't know.

11 Q. You don't know. Okay. I didn't hear
12 your response. I'm sorry. Okay. Moving on.

13 Is it correct that, immediately upon
14 your being rehired by the company, Ms. Fischman
15 was assigned to report to you as a supervisor?

16 MS. COLWIN: Objection.

17 A. Ms. Fischman reported to me on my
18 arrival, yes.

19 Q. And you were her supervisor, correct?

20 A. Yes.

21 Q. I'm referring now to paragraph 76 of
22 the First Amended Complaint, if you could just
23 turn to that.

24 Do you see on the second sentence of
25 paragraph 16, there's an allegation that on March

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2 1st, 2016, Ms. Fischman complained to Mr. Oliva
3 that one of the company's female employees was
4 denied a severance package while her male
5 colleague had been offered a severance package
6 under very similar circumstances.

7 Do you see that allegation?

8 A. I do.

9 Q. Did you have an interaction with
10 Ms. Fischman on March 1, 2016?

11 A. I do not remember.

12 Q. Did Ms. Fischman ever complain to you
13 about a female employee being denied a severance
14 package?

15 A. Not that I recall. I recall Jennifer
16 being upset that an affiliate was overpaying in
17 their severance packages.

18 Q. Can you help me place that in time,
19 temporally?

20 A. I don't recall.

21 Q. Do you know who they were overpaying,
22 according to Ms. Fischman?

23 A. Basically, everyone.

24 So that company had a series of
25 reductions. They went from having a plant that

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2 was demolished and many employees, to very few, to
3 a handful; at this time, there's barely any. And,
4 over time, we assisted them with multiple
5 reductions. And I do recall Jennifer being upset
6 that they were overpaying or, you know, not -- not
7 being savvy in their reduction.

8 And I also recall advising Jennifer
9 that, when it comes to the economics of it, this
10 is their decision, that's what the president does.
11 We can advise, we can tell them what we think is
12 standard, but, ultimately, it's their call.

13 Q. Did Ms. Fischman ever complain to you
14 about Amber Todd being separated from the company?

15 A. No.

16 Q. Did she ever complain that Amber Todd
17 was being provided with a less generous severance
18 package than her husband, Dan Todd?

19 A. No.

20 MR. BERMAN: Can we mark this as the
21 next exhibit, please.

22 (Plaintiff's Exhibit 49, multipage
23 document Bates stamped DEF-000590 through
24 000599, confidential, marked for
25 Identification, as of this date.)

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2 MR. BERMAN: For identification,
3 Plaintiff's 49 is Bates stamped DEF-000590
4 through 599.

5 Q. Mr. Oliva, are you looking at the
6 document?

7 A. Yes.

8 Q. Have you seen it before?

9 A. Yes.

10 Q. Can you tell me what it is?

11 A. Well, I haven't looked at all the
12 pages, but on top --

13 MS. COLWIN: You have the wrong one.
14 This is the one you handed me. Hold on a
15 second.

16 Q. Have you seen this document before?

17 A. Yes.

18 Q. Can you tell me what it is?

19 A. This is the annual performance review
20 for Jennifer that's for the fiscal year 2015.

21 Q. Can I direct your attention to the
22 third page of the document, which is Bates stamped
23 DEF-000592?

24 A. Yes.

25 Q. Do you see the section that says

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2 manager comments?

3 A. I do.

4 Q. Do you see the note there that says,
5 "it is important to note that this performance
6 review and the related comments and suggestions
7 are based on the fourth quarter of the fiscal year
8 2015 only"?

9 A. I do. I wrote it.

10 Q. Is that correct?

11 A. Yes.

12 Q. As far as you know, is this document a
13 correct and accurate representation of a
14 performance review delivered to Ms. Fischman on or
15 about April 30, 2016?

16 A. I think the meeting is later. Yes,
17 it's correct, but as far as the date goes, I think
18 the meeting -- or at least it's signed in May.

19 Q. So the date on the front cover does
20 not control, correct?

21 A. Right.

22 Q. And that's your signature on page --

23 A. Yes.

24 Q. -- 596?

25 A. 595.

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2 Q. 595. And what about 596?

3 A. And 596, yes.

4 Q. Okay. Thank you.

5 Looking at the panel in the center of
6 page 592, did Ms. Fischman receive a "needs
7 improvement rating" on the communication category
8 performance?

9 A. She did. The lowest rating possible.

10 Q. Can you tell me why she received that
11 rating?

12 A. Yes. Because, in the short term that
13 I had dealt with her from November 30, 2015 to the
14 point of this review, Jennifer needed to work on
15 her tone, she needed to improve her tone and
16 demeanor the way that she went about her business,
17 and communication style.

18 Q. Turning now to the next sentence of
19 that same section where it says, "Jennifer has had
20 a challenging year and her continued success and
21 ability to meet client demands is a testament to
22 her skill, intelligence, capability and
23 integrity."

24 Do you see that section?

25 A. I do.

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2 Q. Was this section of the performance
3 appraisal provided by you?

4 A. Yes.

5 Q. What about the remainder of this
6 section under management comments?

7 A. Yes.

8 Q. And are the comments contained in the
9 manager comments section accurate, to the best of
10 your knowledge?

11 A. At that time, yes.

12 Q. So at the time that you wrote this
13 performance appraisal for Ms. Fischman, did you
14 have any question about her integrity?

15 A. No.

16 MS. COLWIN: Objection.

17 Q. At the time that you wrote this
18 report, did you have any question about Jennifer
19 maintaining a high ethical standard?

20 MS. COLWIN: Objection.

21 A. No.

22 Q. Did you have any question about her
23 communicating directly with regard to any
24 potential ethical concern?

25 MS. COLWIN: Objection.

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2 A. No.

3 Q. And with regard to Ms. Fischman's
4 competencies, did she, in fact, exceed
5 expectations in most areas?

6 MS. COLWIN: Objection.

7 Q. I'll direct your attention, if it
8 helps, to the bottom portion of the management
9 comments.

10 A. Yes.

11 Q. Now, with respect to the final line on
12 this page, the bottom of 592, do you see the
13 comment there that says, "I believe there is room
14 for improvement in communication" comma -- I think
15 that's a comma -- "specifically communicating in a
16 respectful tone and manner and being aware of and
17 responsive to verbal and nonverbal communication
18 styles."

19 Do you see that sentence?

20 A. I do.

21 Q. So with respect to the first portion
22 of that sentence concerning tone and manner, have
23 you described for me already your concerns about
24 Ms. Fischman's tone and manner?

25 MS. COLWIN: Objection.

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2 A. Essentially.

3 Q. At the time that this document was
4 created, did you have any other concerns about
5 Ms. Fischman's tone and manner, other than those
6 that you described to me already?

7 MS. COLWIN: Objection.

8 A. Not that I recall.

9 Q. With respect to Ms. Fischman's verbal
10 and nonverbal communication styles, in your view,
11 what room for improvement was there for
12 Ms. Fischman with respect to those?

13 A. Jennifer reacts first and thinks
14 second. Jennifer could have tried a more measured
15 approach and a more culturally sensitive approach
16 to dealing with clients, and Japanese in
17 particular. Like I had identified where I
18 identify an issue, and she yells. It's an
19 inappropriate response. There's a lot of room for
20 improvement there. For someone who's supposed to
21 be so senior, a measured and appropriate
22 communication style is critical, and so there's a
23 lot of room for improvement that way.

24 And nonverbally, I do recall -- now
25 you invited me to recall other items. I do recall

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2 people complaining about Jennifer eating in
3 meetings, bringing food into meetings. We have a
4 kind of formal meeting culture, and it's not
5 really all that acceptable, and there was room for
6 improvement in being sensitive.

7 Reading the room. You know, there's a
8 saying, like reading the room or reading the air,
9 and Jennifer was not good at that. There was a
10 lot of room for improvement there.

11 Q. On any occasions where those
12 activities you just described took place, did you
13 prepare any notes reflecting those
14 contemporaneously?

15 A. I think so.

16 Q. To the best of your knowledge, have
17 those been provided to your counsel?

18 A. Yes.

19 RQ MR. BERMAN: To the extent not already
20 produced, we call for the production of
21 those notes.

22 MS. COLWIN: Taken under advisement.

23 MR. BERMAN: Thank you.

24 MS. COLWIN: Matt, I will -- Nick will
25 testify about Catalent. He can testify

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2 about Catalent. You asked a question --

3 MR. BERMAN: Can you please refer back
4 to the portion of the testimony marked
5 previously? Was there more one spot or just
6 one spot?

7 THE REPORTER: I believe there was one
8 spot.

9 (Record read as follows:

10 "Question: Okay. What was your base
11 at the Catalent position that you were
12 departing from?"

13 A. I don't remember.

14 Q. Were you previously compensated at a
15 lower level than the level you were compensated
16 with when you returned to MCHA as general counsel?

17 MS. COLWIN: Objection.

18 MR. FORTINSKY: Objection.

19 A. Yes.

20 Q. Was that question clear or unclear?

21 A. Clear.

22 Q. Okay. We can set aside Exhibit 49.
23 We're done with that.

24 Turning back to Exhibit 3, which is
25 the First Amended Complaint. I'd like to direct

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2 your attention to page 16, paragraph 78.

3 A. Okay.

4 Q. In approximately August of 2016, was
5 Ms. Fischman tasked to investigate a claim of
6 sexual harassment?

7 A. Yes.

8 Q. Was that claim involving a female
9 colleague in the legal department?

10 A. As a witness, not as a complainant.
11 There's a lot wrong in this paragraph 78.

12 Q. Okay. So as we go through the
13 paragraph, will you please let me know if any of
14 these allegations are disputed and which
15 allegations they are, and what the correct facts
16 are.

17 MS. COLWIN: Objection.

18 Q. Let's start with the first sentence.

19 "In August 2016, Ms. Fischman was
20 tasked by Mr. Oliva to investigate a claim of
21 sexual harassment made by a female colleague in
22 the legal department." And I think you've just
23 described for me that the colleague in the legal
24 department in question was a witness; is that
25 correct?

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2 A. Yes.

3 Q. Do you know who the complainant was?

4 A. Yes.

5 Q. Was there more than one complainant?

6 A. Yes.

7 Q. And where were those complainants
8 located?

9 A. The Jersey City office.

10 Q. All right. So was Ms. Fischman
11 responsible for investigation of the complainants'
12 claims?

13 MS. COLWIN: Objection.

14 A. She was responsible for investigating
15 what had come to us from the Human Resources
16 department as several complaints, none of those
17 through the HR function from the member of the
18 legal department.

19 Q. Okay. Just so we're clear. Is the
20 member of the legal department as a witness Ann
21 Reilly?

22 A. That's correct.

23 Q. And who are the complainants?

24 A. Other members of the Jersey City
25 pharmaceutical business. They were both men and

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2 women. Jennifer Kohler, Armand Famiglietti, a
3 Japanese expat, I think it was Hiroo, I don't
4 recall for sure, and Ann was the witness. But I
5 think about six names were given to us.

6 Ann Reilly became a witness because I
7 had originally asked her, when I had determined
8 not to have Andy Csaszar investigate the matter, I
9 had originally gone to Ann Reilly and asked her,
10 because although it wasn't my first choice, she
11 was a member of the legal department, and that's
12 when she confided in me that she had a similar
13 experience, and at that point, I could not ask her
14 to also investigate.

15 Q. Why not?

16 A. Because --

17 MS. COLWIN: Objection.

18 MR. BERMAN: You can answer, unless
19 instructed otherwise.

20 MS. COLWIN: No, you can answer.

21 A. Because if she experienced the
22 behavior, she can't be completely unbiassed in
23 investigating the behavior.

24 Q. Okay. Was there ultimately an
25 investigation of the complainants' claims?

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2 A. Yes.

3 Q. Who conducted the investigation?

4 A. Jennifer.

5 Q. Did anyone supervise Jennifer's
6 conducting of the investigation?

7 A. I gave Jennifer guidance.

8 Q. Other than the guidance that you
9 provided to her, was she reporting to anyone else
10 in connection with performing the investigative
11 duties?

12 A. No.

13 Q. Did Ms. Fischman recommend hiring
14 outside counsel to do the investigation?

15 A. She did.

16 Q. And did you decline her invitation?

17 A. I did. I thought Jennifer was
18 entirely capable of handling this investigation.

19 Q. Did it turn out that she properly
20 investigated the claims, in your view?

21 MS. COLWIN: Objection.

22 A. I think her investigation yielded
23 enough information for us to take appropriate
24 action.

25 Q. So it met your requirements?

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2 MS. COLWIN: Objection.

3 A. Yes. The investigation was fine.

4 Q. When you say -- I think you said you
5 provided guidance to Jennifer in how to conduct
6 the investigation. Did you provide her with your
7 protocol for investigating that you discussed
8 previously?

9 MS. COLWIN: Objection.

10 A. Yeah, in a manner of speaking, yes. I
11 encouraged Jennifer to speak with all of the
12 witnesses, and to specifically ask every witness,
13 as I do in every investigation, to ask them who
14 else might have experienced or witnessed the same
15 behavior, and then to go ask them, go interview
16 them.

17 Q. Is that a standard step of your
18 investigative protocol?

19 A. Yes.

20 Q. Do you expect your subordinate
21 attorneys who are investigating claims to apply
22 that protocol?

23 MS. COLWIN: Objection.

24 A. And I remind them, like I did in
25 Jennifer's case.

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2 Q. Did you mention that you considered
3 having Mr. Csaszar investigate the claims?

4 A. I did.

5 Q. What was the reason why you ultimately
6 had Ms. Fischman investigate the claims rather
7 than Mr. Csaszar?

8 A. There were several reasons. The first
9 was, Andy had just opened an investigation and, as
10 a result of the way he handled it, we had a very
11 sort of belligerent witness. I didn't think it
12 was handled great, and so I didn't want to give
13 him another one immediately.

14 Second, Andy was in the Jersey City
15 office and responsible for daily communications
16 with the witnesses and the accused, and I thought
17 it would probably not be the best opportunity for
18 him, combined with the first instance where he
19 maybe didn't handle things so perfectly. So I
20 went to Ann to ask her if she was comfortable or
21 if she might be a suitable person, because she was
22 in the same location, Jersey City.

23 When she told me that she was -- that
24 she had experienced the behavior herself, I was
25 disappointed that she hadn't told me that already,

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2 but, of course, I determined that she couldn't
3 conduct the investigation, that she was a witness,
4 and then I asked Jennifer if she would do it.

5 Q. Did you instruct Ms. Fischman how to
6 conduct the investigation?

7 MS. COLWIN: Objection.

8 A. In a manner of speaking. I told her
9 to -- here's the witness list, talk to Deborah
10 Moorer, the HR person, interview every witness,
11 find out what happened, and ask every witness who
12 else might have experienced or witnessed the same
13 thing, and go talk to them.

14 Q. Did Ms. Fischman interview the subject
15 of the investigation?

16 A. No one interviewed the subject of the
17 investigation.

18 The accused you mean?

19 Q. Yes.

20 A. No one interviewed the accused.

21 Q. Why not?

22 A. We had enough info --

23 MS. COLWIN: Objection.

24 A. We had enough information on the basis
25 of multiple witness statements to take appropriate

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2 action.

3 Q. Did you instruct Ms. Fischman not to
4 interview the accused?

5 MS. COLWIN: Objection.

6 A. I don't recall instructing her not to.

7 Q. Did she ask you if she could interview
8 the accused?

9 A. I don't recall her asking me if she
10 could.

11 Q. You indicated that this paragraph was
12 not factually correct. Is there anything that you
13 haven't told me about that's incorrect about this
14 paragraph and the allegations contained therein?

15 MS. COLWIN: Paragraph 78?

16 MR. BERMAN: Yes. I just want to give
17 the witness the opportunity to provide any
18 other information he has on this topic.

19 A. So this says that I communicated to
20 her what I, in italics, expected her to find.
21 Based on the information I had been provided by
22 Deborah Moorner, the HR person who initially
23 reported this to me from multiple sources, both
24 men and women, and my conversation with Ann
25 Reilly, I understood at that time that none of the

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2 complainants, who had all experienced what they
3 called nonsexual but unwanted touching, had never
4 communicated to the accused that they didn't like
5 it or didn't want it or wanted it to stop, that no
6 communication from anyone, neither HR, nor any of
7 the complainants had been made to that person.

8 So I do recall telling Jennifer that I
9 would not be surprised if you interviewed
10 everyone, including everyone else who they
11 identified, and no one has said to this person not
12 to do this. Again, all of them identified this as
13 non-sexual unwanted or odd touching, like of a
14 sleeve or something like that, or dusting
15 something off, both men and women.

16 So I take issue with that, because
17 this suggests that I told her what the conclusion
18 of the investigation is. She had autonomy to
19 conduct the investigation. I wasn't in the
20 meeting. I did not direct what it should find. I
21 said, I wouldn't be surprised if we find out that
22 no one has said anything. That's one thing I take
23 issue with here.

24 And it says that she was allowed only
25 to interview the female claimant. In fact, I

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2 believe she interviewed two male people. Not the
3 accused, two male witnesses who either experienced
4 or witnessed the behavior. I did not interview
5 them, Jennifer did.

6 I did not communicate about what I
7 expect all the witnesses to say, except as I just
8 identified, and I certainly did not say what to
9 write in her report. No one interviewed the
10 alleged accused because I communicated on the
11 basis of the information that we had received on
12 the number of confirmed reports that -- after
13 discussing with the president of the company, that
14 I would communicate directly as the chief
15 compliance officer that the behavior needs to stop
16 immediately, and that this what is perceived and
17 this is why it needs to stop. And that's what I
18 did.

19 It wasn't an interview. It was a
20 communication. And, as of that date, no further
21 activity had ever occurred. We actually went back
22 about six weeks later and asked for all of the
23 witnesses to communicate back whether or not the
24 behavior continued, and they all confirmed it had
25 not.

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2 So from the point at which I met out
3 the result, no further action occurred, no further
4 offensive behavior. So that's what I take issue
5 with in here. This is twisted.

6 Q. Have you had an opportunity to
7 complete your response?

8 A. Yes.

9 Q. Turning your attention to paragraph
10 79. Did Ms. Fischman complain to you about her
11 perception that you were gender biased in the
12 conduct of the investigation?

13 A. No.

14 MS. COLWIN: Objection.

15 Q. Turning your attention to the next
16 sentence in that paragraph, did Ms. Fischman have
17 a conversation with you during October 2016
18 wherein she complained about women being treated
19 differently than men?

20 MS. COLWIN: Objection.

21 A. I don't recall that conversation, but
22 I can tell you that, as the co-chair of the
23 diversity committee at Bristol and as the general
24 counsel and chief compliance officer at Mitsubishi
25 Chemical, that would have been something that I

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2 would have taken very seriously, and I don't
3 recall that happening at all.

4 Q. Did Ms. Fischman ever make any
5 complaints to you about disparate treatment on the
6 basis of gender at MCHA?

7 MS. COLWIN: Objection.

8 A. Can you repeat that?

9 MR. BERMAN: Could you read it back,
10 please.

11 (Record read.)

12 MS. COLWIN: Objection.

13 A. No.

14 Q. Did she have any other conversations
15 with you wherein she raised the issue of disparate
16 treatment on the basis of gender?

17 A. No. I think that's the same question.

18 Q. Did Ms. Fischman ever make a comment
19 to you concerning her reassignment from acting
20 general counsel to assistant general counsel being
21 gender discrimination?

22 MS. COLWIN: Objection.

23 A. No.

24 Q. Turning your attention to the next
25 paragraph, paragraph 80. If you could just take a

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2 look at that for a moment, and let me know when
3 you're done.

4 A. I'm done.

5 Q. Are you familiar with the subject
6 matter of the Genomatica matter?

7 A. Yes.

8 Q. Was that a litigation that MCHA was
9 responsible for?

10 A. Yes.

11 Q. On or about November of 2016, was
12 there a judicial settlement conference in
13 connection with that matter?

14 A. One was scheduled.

15 Q. Do you know if it ultimately took
16 place?

17 A. Two ENE settlement conferences
18 ultimately took place, but I don't recall the
19 dates particularly. I remember one was scheduled
20 and postponed.

21 Q. Up until that point, who had been the
22 attorney with primary responsibility for the
23 Genomatica litigation?

24 A. Josh Berman as outside counsel,
25 Jennifer Fischman leading and supervising outside

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2 counsel, with my direction.

3 Q. When it came time to attend the first
4 of the judicial settlement conferences, did
5 someone make a decision as to who would attend on
6 behalf of the client of MCHA in the Genomatica
7 matter?

8 That might be a little imprecise, so I
9 just want to clarify. Maybe it's easier to break
10 it up into pieces.

11 Who was the client on the Genomatica
12 matter?

13 A. MCC.

14 Q. And in connection with serving the
15 needs of the client, was MCHA acting in a
16 representative role?

17 A. They were our client, and we engaged
18 outside counsel to litigate.

19 Q. So is it fair to describe it as MCHA
20 was representing the client in a legal
21 representation through outside counsel?

22 A. Using --

23 MS. COLWIN: Objection.

24 A. -- outside counsel.

25 Q. Using outside counsel.

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2 And that would be Mr. Berman, correct?

3 A. Yes.

4 Q. So did there come a time when there
5 had to be a determination as to who would attend
6 the judicial settlement conference on behalf of
7 MCC?

8 A. Yes. So for the ENE, you are required
9 to present someone who has authority to settle,
10 and so we asked who will it be.

11 Q. I'm sorry for the imprecision of my
12 questioning. What I intended to ask was about the
13 selection of the attorneys who would attend the
14 conference on behalf of MCC.

15 Did there come a time where a
16 determination had to be made concerning which
17 attorneys would represent MCC's interest at the
18 conference?

19 A. No. It was always Josh Berman.

20 Q. Did any MCHA attorneys accompany
21 Mr. Berman to the conference?

22 MR. BERMAN: No relation, by the way.

23 A. No, not in that capacity. I mean, I
24 attended the conference in the only capacity as --
25 I didn't appear as counsel.

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2 Q. So how would you describe the capacity
3 in which you were appearing?

4 A. As a business representative of MCC.

5 Q. So did there come a time where
6 somebody had to make the determination as to which
7 MCHA personnel would appear at the conference as
8 business representatives of MCC?

9 A. Well, it wasn't --

10 MS. COLWIN: Objection.

11 A. It wasn't with regard to which MCHA
12 person would attend. The question was, will MCC
13 attend? And their response was, no, MCHA will
14 attend. This -- remember, MCC is a multi
15 billion-dollar business, multi billion-dollar
16 company. This matter was 3 million or less, at
17 max. Right? So to send a very high-ranking
18 person for this maybe didn't make sense.

19 So we asked, you need to send someone
20 who has authority to settle. Who will it be? And
21 they said, we'll get back to you as -- I recall
22 them saying or writing, we'll get back to you as
23 to whether it's MCC or MCHA. And then they came
24 back to us and said, it's MCHA, we'd like you,
25 Nick, to go.

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2 Q. Let's break that up into pieces.

3 Who made the decision as to whether
4 MCC or MCHA would attend?

5 A. I don't know. It's internal to MCC.

6 Q. Okay. Who made the decision, once it
7 was determined that MCHA would go, concerning your
8 attendance?

9 MS. COLWIN: Objection.

10 A. I don't know, but I think I recall
11 that the e-mail said, we have decided MCHA. Nick,
12 please attend, or something like that. Or Nick
13 will -- you can attend for us.

14 Q. At that time, when that decision was
15 made, were you fully informed concerning the
16 Genomatica matter?

17 A. Yes.

18 Q. So, up until that time, did you play
19 an active role in the litigation?

20 MS. COLWIN: Objection.

21 A. Yes.

22 Q. What was your role in connection with
23 the litigation up until that time, of being
24 informed that you would attend the settlement
25 conference?

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2 MS. COLWIN: Objection.

3 Q. Without revealing any communication.

4 A. So starting from the very beginning,
5 it was my role to set the strategy. I had
6 communicated around what we could use litigation
7 for. I think it's really important to understand
8 that this case was really important to MCHA, more
9 so than -- maybe than to MCC.

10 MCC had determined that they wanted to
11 be a global business, as we already talked about,
12 and this was an opportunity for us at MCHA to
13 communicate to MCHC that they could rely on us in
14 a legal function in the Americas, and they could
15 use tools that may be uncomfortable for them, like
16 litigation, that we could use these tools to help
17 drive their global business, and that actually
18 filing litigation against someone is a tool that
19 you can use, that I have, you know, waited for or
20 used previously, that you can use for people to
21 bring them to the table to get a good business
22 result.

23 And so from -- to answer your
24 question. From the very beginning, the
25 conversation from my side, my role, was around

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2 strategy. How do we use litigation? How do we
3 make this filing in a way that brings Genomatica
4 to the table, right, and that we can get a good
5 business result and engenders trust with our
6 client, so that the next one comes along, they
7 realize they can call us, they can trust, they can
8 use us for their matters as they grow.

9 Further, more detailed than that, I
10 reviewed filings for tone, especially for tone.
11 Yes, for subject matter, but mostly for tone. And
12 the reason why that's important is because this is
13 reflective of our client. Our client is going to
14 go in a public way and make statements, and
15 they're Mitsubishi Chemical Corporation, and they
16 have a way about them that's professional and
17 appropriate. It's culturally sensitive. And I
18 needed to review those filings to make sure they
19 comported with who we are as a company. And so I
20 was very active in reviewing the documents.

21 I was also very active in
22 communicating to Jennifer and Josh what our
23 expectations should be. What does good look like?
24 How do we comport ourselves? So the day-to-day
25 affairs were Josh Berman, the supervision of that

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2 was Jennifer, the client was MCC, but I was very
3 active, including in reviewing documentation, to
4 make sure that we were doing this in a way that
5 would engender trust with our client and get the
6 right result.

7 Q. Have you completed your response?

8 A. Yes.

9 Q. Okay. Did Ms. Fischman ever complain
10 that she should have been permitted to attend that
11 conference, or the first of those two conferences?

12 A. No.

13 Q. Did she ever complain that she should
14 have been permitted to attend the second of those
15 two conferences?

16 A. She was not working at Mitsubishi at
17 the time of the second one.

18 Q. Okay. Did you, in fact, attend the
19 first of the two settlement conferences?

20 A. I did.

21 Q. Did you, in fact, attend the second of
22 the two settlement conferences?

23 A. I did.

24 Q. In connection with the first of those
25 two settlement conferences, were you provided with

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2 settlement authority by MCC?

3 A. So I had specific -- well, the court
4 rule, as I mentioned before, is that you have to
5 bring someone representative of the client, of the
6 plaintiff, MCC, with settlement authority. That's
7 essentially unlimited, right? You have to show up
8 with someone who can make decisions for the
9 company.

10 So I was very clear in communicating
11 to Jennifer and Josh and MCC that I wanted that
12 document to bring with me, to show that I had
13 settlement authority for the purposes of that ENE
14 that met those requirements, and I asked
15 specifically can I get a board resolution from MCC
16 giving me that authorization, and, in the absence
17 of that, a signatory for Takimoto-san, who's the
18 executive, granting me authority for the purposes
19 of that ENE with a document.

20 I also think I asked Jennifer or Josh,
21 I may have asked Jennifer to ask Josh, to draft it
22 for them, so that it would comport exactly with
23 the requirements of the ENE.

24 Q. Have you completed your response?

25 A. Yes.

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2 Q. So with respect to the first of the
3 two settlement conferences, or ENEs -- by the way,
4 just to clarify, when you use the term
5 Takimoto-san, is that equivalent to Mr. Takimoto?

6 A. It's a manner of respect. It's
7 Japanese culture to refer to someone either as
8 Mr. Takimoto or Takimoto-san. We -- I use San.

9 Q. Okay. That's fine. I'm just making
10 sure we understand who we're talking about. Thank
11 you.

12 And then, with respect to the first of
13 the two settlement conferences, are those also
14 known as ENEs? E like Edward, N like nighttime, E
15 like Edward?

16 A. Yes.

17 Q. Can you tell me what that stands for?

18 A. I don't recall.

19 Q. Is it Early Neutral Evaluation?

20 A. That may be it.

21 Q. So can we use those terms
22 interchangeably, settlement conference and ENE for
23 this --

24 A. Yes.

25 Q. -- the purpose of discussing the

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2 Genomatica litigation?

3 A. Yes. There's a federal magistrate
4 overseeing those.

5 Q. Okay. I just want to make sure we're
6 talking about the same thing.

7 When you attended the first of the two
8 ENEs, or settlement conferences, did you have an
9 understanding of what the client was looking to
10 settle the matter for?

11 A. The first of the two was mostly around
12 posturing. I don't think any of us really thought
13 we might settle at that first one. No, I don't --
14 I don't recall going in there with a -- with an
15 ID, you know, with a -- with a number or a minimum
16 or a maximum. Again, I had to go there on the
17 authority of that document with the ability to
18 settle. That doesn't mean I was required to
19 settle. But with the ability to settle. And I
20 think it was mostly -- that first one was mostly
21 about posturing. I don't think any of us really
22 thought we were going to walk out of there and be
23 completely done that day.

24 Q. Okay. But does one normally attend a
25 settlement conference without some idea of what

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2 they could actually settle the matter for?

3 A. I don't know what one normally does --

4 MS. COLWIN: Objection.

5 A. -- but I can -- I can say that, in
6 that case, I knew what the parameters of this case
7 were from an earlier ridiculously low offer of
8 something like 100,000 to our entire claim of
9 roughly 3 million, so I knew what the value of the
10 case was.

11 Q. So had there been any discussion as to
12 your ability to actually effectuate a settlement
13 at the first settlement conference? And when I
14 say discussion, I mean between MCHA and MCC.

15 A. There was --

16 MS. COLWIN: Objection.

17 Q. Without divulging any privileged
18 communications, are you able to answer the
19 question?

20 A. Well, as I mentioned, there was
21 specifically a document that I had asked for in
22 writing from the Board of Directors that was
23 ultimately signed by Takimoto that gave me
24 authority to do it at the ENE.

25 Q. I understand that you had actual

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2 authority to settle the matter in the form of a
3 written communication that granted you that
4 authority expressly, right? And we're going to
5 get to that document, and I'll show it to you, and
6 you'll have an opportunity to provide me with more
7 information on that document.

8 But what I'm asking you is something a
9 little bit different, and maybe it's a little bit
10 more nuanced.

11 What I'm asking you is, although you
12 had authority to settle the matter, did you have
13 any actual understanding of what, from the
14 client's perspective, a successful settlement
15 would look like.

16 MS. COLWIN: Objection.

17 A. I don't recall a conversation like
18 that. We had been discussing this case for a good
19 period of time, and, as I mentioned, from very low
20 to our entire amount. So I don't have an answer
21 to that. I don't know. I don't recall.

22 Q. When you say there had been
23 discussions about very low, what do you mean was
24 very low?

25 MS. COLWIN: Objection.

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2 Q. Do you mean a financial amount?

3 MS. COLWIN: I'm just going to caution
4 you, Mr. Oliva, that this may be privileged
5 communication, and you may not be able to
6 answer. It's not your right to. You
7 understand.

8 Q. Are you able to answer the question?

9 A. Say your question again.

10 MR. BERMAN: Could you repeat it back,
11 please?

12 (Whereupon, the requested question was
13 read back by the reporter.)

14 MS. COLWIN: Are you seeking the
15 financial amount, Matt?

16 Q. No, I'm not asking you what the
17 financial amount was. I'm just asking you to
18 clarify, when you referenced something that was
19 very low about the settlement, did you mean that
20 the settlement amount would be very low or the
21 settlement amount being discussed was very low?

22 A. What was offered to us was very low.

23 Q. Okay. At some point, was MCC offered
24 \$130,000?

25 A. Something like that.

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2 Q. So when you said very low, were you
3 referring to that?

4 A. Yes.

5 Q. Okay. Got it.

6 MS. COLWIN: Okay. Can we take a
7 quick break?

8 MR. BERMAN: We can take a quick break
9 whenever you want.

10 Let's go off the record.

11 (Discussion held off the record.)

12 (Recess taken: 2:28 to 2:36 p.m.)

13 MR. BERMAN: Back on the record.

14 (Plaintiff's Exhibit 50, a two-page
15 document Bates stamped DEF-001654 through
16 001655, confidential, marked for
17 Identification, as of this date.)

18 MR. BERMAN: So, for identification,
19 Exhibit Plaintiff's 50 is a two-page
20 document Bates stamped DEF-001654 through
21 55.

22 Q. Mr. Oliva, are you looking at the
23 document?

24 A. Yes.

25 Q. Have you seen it before?

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2 A. I'm not sure.

3 Q. Okay. Is this an e-mail communication
4 from Donna Costa --

5 A. Oh, I see --

6 Q. -- to you on or about December 7,
7 2015?

8 A. Yes.

9 Q. Does it include an attachment?

10 A. Yes.

11 Q. Do you know what that attachment is?

12 A. It looks like Jennifer's performance
13 review from Donna previously.

14 Q. So at the time of this message, you're
15 back at the company in your general counsel
16 position, correct?

17 A. For one week, yes.

18 Q. So the review in question had already
19 been delivered to Ms. Fischman at that point,
20 correct?

21 A. Yes.

22 Q. Do you know why Ms. Costa was sending
23 you a copy of the evaluation?

24 MS. COLWIN: Objection.

25 A. I do not know.

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2 Q. Was there any discussion with
3 Ms. Costa concerning her sending you a copy of
4 Ms. Fischman's evaluation?

5 A. I don't recall.

6 Q. Were you sent any of Ms. Fischman's
7 prior evaluations, besides this one?

8 MS. COLWIN: Objection.

9 A. I don't recall. As I mentioned, I can
10 say that I went into Jennifer's office on my first
11 day with the concept that we could probably make
12 this work, and I communicated that to Donna. So I
13 don't know why Donna sent them, but I don't recall
14 having conversations about them. I certainly
15 didn't ask for them.

16 Q. So on or around this time, a week into
17 your reemployment at the company, did you have any
18 discussions with Ms. Costa about Ms. Fischman's
19 performance during the first week?

20 MS. COLWIN: Objection.

21 A. I don't remember.

22 Q. Okay.

23 A. It's possible.

24 Q. Okay.

25 MR. BERMAN: Mark this, please.

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2 (Plaintiff's Exhibit 51, a two-page
3 document Bates stamped DEF-000864 through
4 0008865, confidential, marked for
5 Identification, as of this date.)

6 MR. BERMAN: For identification,
7 Plaintiff's 51 is a two-page document Bates
8 stamped DEF-000864 through 865.

9 THE WITNESS: Okay.

10 Q. Have you seen this document before?

11 A. Yes.

12 Q. Can you tell me what it is?

13 A. It's a note to myself about a meeting
14 I had with Jennifer.

15 Q. When did the meeting take place?

16 A. It says "notes from Jennifer meeting
17 today," so I expect March 3rd of 2016.

18 Q. Can you tell me what transpired during
19 that meeting?

20 A. Well, I think it's reflected here. I
21 had alluded to before the Pauletta, that's
22 Pauletta Brown, the Lucite general counsel. I
23 don't recall what direct confrontation about
24 one-on-one is. Direct confrontation on MKIC
25 employment issue I don't recall what that is.

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2 But, as I mentioned before, Jennifer was upset
3 that they were overpaying -- Stephen to Donna on
4 corporate governance. This one was a
5 confrontation. This may be -- well, they are
6 listed as separate things.

7 Stephen to Donna on corporate
8 governance was, Jennifer did not want to talk to
9 Kelli. Kelli is the person who was responsible
10 for corporate governance, getting board
11 resolutions drafted. And Stephen required a
12 ruling on whether or not we needed a board
13 resolution. The right person to ask whether or
14 not we need -- we, meaning a client, right,
15 whether or not one of our clients needs a board
16 resolution to take action, is the general counsel.

17 Kelli knows the answer to that
18 question very well. She's been doing this a
19 really long time. But Jennifer didn't want to ask
20 Kelli, and Stephen wasn't sure to whom he should
21 go, because I think he felt like he reported to
22 Jennifer because she hired him, although, you
23 know, direct line reporting, that wasn't -- that
24 wasn't the HR system way.

25 Jennifer directed Stephen to talk to

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2 Donna and ask Donna what the answer was. And I
3 confronted her on that for a number of reasons.
4 That's not the way our department should work.
5 Number 1, Kelli can answer that question. She
6 does it for clients all the time. She has a list
7 of what requires board approval and what doesn't.
8 She can answer the question based on her
9 experience and these training documents, these
10 internal documents. And, if not, if there's a
11 question because it's curious or maybe it's a
12 special circumstance, the right person to ask in
13 that case is me, the general counsel. Donna
14 certainly could answer the question, she was the
15 general counsel for 20 years, but she's moved on
16 to the president role.

17 Why would Jennifer direct Stephen to
18 Donna, instead of to Kelli or to me? That's not
19 an efficient and well-oiled legal function. So I
20 had confronted her on that.

21 When I asked her -- you know, I told
22 her, these are all these things that I'm seeing
23 today, what's up with you? This is where you can
24 see my notes. She replied, miserable here, and
25 the document speaks for itself.

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2 Q. I understand the document says what it
3 says, but you have firsthand knowledge of -- of
4 your interactions with Ms. Fischman, so I'm just
5 trying to get your perspective --

6 A. Sure.

7 Q. -- on the context that this document
8 was created in.

9 So when it says, I'm miserable, I'm at
10 the point where I have to make a decision, and
11 there's a parentheses, alluding to quitting, but
12 seemed to refuse to say the word, what forms the
13 basis for the conclusion that Ms. Fischman was
14 alluding to quitting?

15 A. Because when I would ask her that,
16 when I would say, because you feel like you want
17 to leave? Or you're -- and she would do like this
18 (indicating), you know. She wouldn't answer the
19 question.

20 Q. Okay. So she never said she wanted to
21 leave, did she?

22 A. She didn't --

23 MS. COLWIN: Objection.

24 A. In that meeting, she did not tell me
25 she wanted to leave. That's why I wrote this

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2 note.

3 Q. All right.

4 A. I specifically asked. It sounded to
5 me, when someone says I'm miserable and I'm at the
6 point at which I have to make a decision, that
7 she's contemplating leaving. And when I ask her,
8 I didn't get an answer at that point.

9 Q. Okay. At or around the time of this
10 conversation on March 3rd, 2016, did you have any
11 understanding of Mrs. Fischman's personal
12 circumstances?

13 MS. COLWIN: Objection.

14 A. In what way?

15 Q. Do you know if she was married?

16 A. Yes.

17 Q. Do you know if her husband was
18 working?

19 A. I don't know.

20 Q. Did she ever have any conversation
21 with you about her personal finances?

22 A. No.

23 MS. COLWIN: Objection.

24 Q. Okay. So that's fine. Let's move on.
25 All right. There's a note here that

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2 says, "wants me to reconsider two days per week
3 from home - standing rule."

4 Can you tell me what that refers to?

5 A. Yes. So if you go back in this
6 document, it reflects that I had asked her
7 specifically, what can I do for you? If you're
8 miserable, what is it that I can do for you? And
9 she identified that she's miserable because of
10 Donna and Katherine Todarello and Esther, right?
11 And she's miserable for Kelli because of her
12 relationships with lots of people in the office.

13 And I ask her, what can I do for you?
14 And she says, I want to work from home three days
15 a week. And I said to her -- on several
16 occasions, I think I said to her before this --
17 let me see (perusing).

18 I'm not sure if this was the first
19 meeting or not. But I had said to her, I don't
20 want a standing rule. I am of the opinion that,
21 you know, time off and those kinds of things
22 should be -- should be more flexible, and that I
23 don't have a problem. In fact, I encourage one
24 day a week from home, if it means that you can
25 focus on special projects without the distractions

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2 of the office or the phone ringing or a client
3 coming by. If that helps you create a new
4 template or a new guidance or create a training
5 deck, or do something meaningful and deliverable,
6 I encourage that.

7 I think that's good for all of us to
8 spend -- I used to say about 20 percent of your
9 time doing those things. I don't say that
10 percentage anymore, as it's different for
11 everybody. I've learned over time, not everybody
12 operates the same way in that regard.

13 But what I said to Jennifer was, I'm
14 not willing to just say we have a standing rule in
15 the department that it's three days per week.
16 What I said was, if you work from home, which she
17 had been doing, and it averages about a day a
18 week, I don't have a problem. And the words that
19 I used with her and others was, I don't have a
20 problem unless I have a problem, right?

21 If I have clients who are in the
22 office and you're not here and they expected to
23 meet with you, I have a problem, right? You have
24 to make arrangements for that; you have to be
25 willing to be in the office when it's appropriate.

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2 Use your judgment. Use good judgment.

3 But she was adamant. She wanted a
4 standing three day a week rule, and there was no
5 basis for it, and I wasn't willing to create that
6 rule for the department, because it wouldn't have
7 been a -- it certainly wouldn't have been a
8 Jennifer rule.

9 Q. Okay. Have you completed your
10 response?

11 A. I think so.

12 Q. Did you mention an individual named
13 Katherine Todarello?

14 A. Yes.

15 Q. Who is that?

16 A. Katherine Todarello is a member of the
17 internal audit function. That's who I reference
18 here by Katherine T. This is not a reference to
19 Kathryn Roche here. This is a reference to
20 another woman in the MCHA office, Katherine
21 Todarello.

22 Q. In Ms. Fischman's capacity as
23 assistant general counsel, did she interact with
24 the internal audit function?

25 A. It's a small office, and, yes, we'd

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2 see each other. It's a very small office. We see
3 each other. And partially, internal audit and
4 legal work together.

5 Q. So was there some friction between
6 Ms. Fischman and Mrs. Todarello -- Ms. Todarello?

7 A. Um...

8 MS. COLWIN: Can I have that question
9 read back.

10 (Whereupon, the requested question was
11 read back by the reporter.)

12 MS. COLWIN: Objection.

13 A. I don't remember, but I wrote here
14 that these are the people that Jennifer described
15 as having a problem with; Kelli, Donna, Katherine
16 Todarello, not Kathryn Roche, Esther, who is a
17 member of the tax department, and then I
18 specifically said, what about me? I'm inviting
19 the -- like, do you have a problem with me?
20 Because if that's the case, we should -- we should
21 talk about this and figure it out. So only after
22 I said, and what about me? She said, yeah, you
23 too. So I wrote down "and Nick too."

24 Q. Did she indicate the nature of the
25 problem with you?

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2 A. Yes. She said that it's very hard to
3 go from acting general counsel to reporting to
4 someone, and that, although, you know, our
5 relationship was fine and she didn't have a
6 problem with me personally, that it's just a very
7 difficult situation for her to be in. And I
8 understood that.

9 Q. Okay. All right.

10 You mentioned Kelli now. Are you
11 aware that, previously, Ms. Fischman had some
12 negative interactions with Kelli Troccoli?

13 MS. COLWIN: Objection.

14 A. I think they had negative interactions
15 with each other.

16 Q. Had you been informed about that prior
17 to being rehired at the company?

18 A. I don't think I was informed prior,
19 but I was certainly informed upon my arrival at
20 least.

21 Q. Prior to your reemployment at the
22 company, did Ms. Costa ever indicate to you that
23 she desired to terminate Ms. Fischman?

24 MS. COLWIN: Objection.

25 THE WITNESS: Can you repeat that?

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2 Q. Can you tell me what that means?

3 A. Those are her words. I don't know
4 what they -- I wrote them down as what I heard her
5 say.

6 Q. Okay. Did you ask her what that
7 meant?

8 A. Yes.

9 Q. Is that how you got to the next
10 comment here, "she primarily" --

11 A. Yes.

12 Q. Did she describe to you the nature of
13 her difficulty with Kelli?

14 A. I don't think she described the nature
15 of any of those. I think she was listing them for
16 me.

17 Q. Did you get into detail on any of
18 those individuals?

19 A. At that meeting, no, I don't think so.

20 Q. At some subsequent point, did you have
21 conversations about any of these relationships?

22 A. Prior and subsequent, I think I had
23 conversations with Jennifer about these. I don't
24 recall any conversation about Esther.

25 Q. Okay.

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2 A. I think that was a little confusing to
3 me, why she would have a problem with Esther in
4 the office. It doesn't make any sense, but that's
5 what she said.

6 Q. Were you aware of any facts around the
7 time of this meeting, March 2016, that would cause
8 you to think that the relationship between
9 Ms. Fischman and Ms. Troccoli was strained?

10 MS. COLWIN: Objection.

11 A. Can you repeat that?

12 MR. BERMAN: Can you read it back,
13 please.

14 (Whereupon, the requested question was
15 read back by the reporter.)

16 A. Yes.

17 Q. Can you relate those facts to me as
18 best you can?

19 A. Yes. Part of, or maybe all of Kelli's
20 complaint was that Jennifer didn't respect her
21 time out of office for medical reasons. And, as I
22 understood it, again, that all occurred before I
23 got there. But as I understood the record of
24 that, Jennifer had put the company at risk, and
25 the way that they handled that wasn't so good, and

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2 there was a very strained relationship between
3 those two. You can see, I think in some of the
4 e-mails that we produced that I recall,
5 communications that show they -- they were at odds
6 there.

7 Q. As of the time of this meeting on
8 March 3, 2016, what was your understanding of the
9 relationship between Ms. Fischman and Ms.
10 Troccoli?

11 A. Jennifer did not want to work with or
12 talk to -- I'm laughing, sorry. Jennifer did not
13 want to work with or talk to Kelli nor Donna, who
14 was the president. Neither of those were
15 acceptable.

16 Q. Did Ms. Fischman relate to you her
17 reasons for not wanting to work with Kelli?

18 MS. COLWIN: Objection.

19 A. Probably she did, but I don't recall
20 what she said. Maybe I have a note.

21 Q. Did Ms. Fischman ever -- Mrs. Fischman
22 ever complain to you that --

23 A. Can I go back?

24 Q. Yes, sure.

25 A. Some of the answer is actually in this

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2 note, now that I look at it. She had hurt
3 feelings. Jennifer had hurt feelings that she
4 wasn't invited to a party at Kelli's house, those
5 kinds of things. It's part -- partly here.
6 Sorry.

7 Q. Did Ms. Fischman ever complain to you
8 that she felt Ms. Troccoli was trying to undermine
9 her?

10 A. No. Not that I remember.

11 MR. BERMAN: Let's move on. 52.

12 (Plaintiff's Exhibit 52, two-page
13 document Bates stamped DEF-001831 through
14 001832, confidential, marked for
15 Identification, as of this date.)

16 Q. Do you wish to say something,
17 Mr. Oliva?

18 A. Yes, please. You asked me about
19 whether she had communicated anything about the
20 nature of that relationship with Kelli, and it's
21 here, it's the second to last bullet. I asked
22 several times what the underlying reason is, and
23 she says Kelli, and says the environment. I dig
24 deeper. She says, it's Kelli. And she says I
25 don't need -- I, Nick, don't need to know why.

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2 And I said to her, I do if I'm going to address
3 team issues, workplace issues, systematic issues,
4 and she agreed. So here I am imploring her to
5 tell me what we can do about this situation.

6 Q. How was that ultimately resolved?

7 A. What ultimately happened, and I think
8 you see it in the note above, is that I requested
9 that she come into the office and that she do the
10 best to work as a team member, which is also
11 reflected in her performance review that year.
12 But she told me she'll do it and she'll do it for
13 me, but when she comes in, she's going to keep her
14 door closed and not talk to anybody.

15 So it wasn't a great resolution, but
16 considering where we were from when I walked in
17 the door, it was a step in the right direction.

18 Q. Were there any subsequent steps in the
19 right direction after that?

20 A. Um, things never got great with
21 Jennifer and others. Certainly not with Donna or
22 Kelli, but things seemed to improve more
23 significantly with me. Seemed to is the -- it's
24 the -- that's the key word.

25 MR. BERMAN: Okay. Let's move on to

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2 Exhibit 52, which the reporter will hand you
3 momentarily. And for identification, this
4 is a two-page document Bates stamped
5 DEF-001831 through 32.

6 Q. Mr. Oliva, are you looking at the
7 document?

8 A. Yes.

9 Q. Have you seen it before?

10 A. I must have. It's an e-mail to me in
11 2016.

12 Q. Okay. So can I direct your attention
13 to the fourth bullet point?

14 A. Yes.

15 Q. Do you see where it says, Jennifer
16 received 25 percent bonus based on her acting GC
17 salary prorated for an eight-month period (per our
18 agreement with her), and it continues on from
19 there?

20 A. Yes.

21 Q. Do you know whether Ms. Fischman
22 received a 25 percent bonus?

23 MS. COLWIN: Objection.

24 A. I don't know.

25 Q. Who would know?

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2 A. Jennifer.

3 Q. Who else?

4 A. Maybe the HR function. Payroll.

5 Q. Would Ms. Saunders know?

6 A. If she recalls. It's been a while.

7 She hasn't worked for the company in a while.

8 Q. At the time, was she in the HR

9 function?

10 A. Yes.

11 Q. So at the time she wrote this e-mail

12 to you --

13 A. But your question to me is -- is at

14 the -- I'm sorry to interrupt. Your question to

15 me was at the time, would I have known if she

16 received this?

17 MR. BERMAN: Let's withdraw that

18 question. I'll try to break it up into

19 pieces.

20 Q. At the time that this communication

21 was provided to you by Ms. Saunders, was Ms.

22 Saunders in a position to know Ms. Fischman's

23 bonus?

24 A. Yes.

25 Q. Okay. So do you have any reason to

1 N. J. Oliva - CONFIDENTIAL

2 believe that this bullet point is not correct?

3 A. No reason.

4 Q. And then as far as -- to the best of
5 your knowledge, does the compensation information
6 contained in this document appear to be correct?

7 A. I have no reason to doubt it.

8 Q. Did there come a time where there were
9 communication difficulties or communication issues
10 between Mr. Joshua Berman, Mrs. Jennifer Fischman
11 and Mr. Takimoto?

12 A. That's a way of describing what
13 happened.

14 MR. BERMAN: Let me rephrase the
15 question then.

16 THE WITNESS: Okay.

17 MR. BERMAN: All right? I'll give you
18 a different -- I'll give you a temporal
19 period to try to bring this into context.

20 Q. On or about October of 2016, were you
21 aware of any communication issues between those
22 three individuals?

23 A. I think around that time I received a
24 complaint through Tomoji Minami by e-mail.

25 MR. BERMAN: Let's mark this one,

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2 please, 53.

3 (Plaintiff's Exhibit 53, a two-page
4 document Bates stamped DEF-876 through 877,
5 marked for Identification, as of this date.)

6 THE WITNESS: I remember this e-mail.

7 MR. BERMAN: Pause just one second,
8 Mr. Oliva.

9 For identification, this is a
10 two-pages, Plaintiff's 53. It's Bates
11 stamped DEF-000876 through 000877.

12 Q. Does this refresh your recollection as
13 to whether there were any communications issues
14 between Mr. Takimoto, Mr. Joshua Berman and
15 Ms. Jennifer Fischman -- Mrs. Jennifer Fischman?

16 A. I would add that it's not just
17 Takimoto-san. It's the MCC team clearly,
18 including Tomoji, and Utsunomiya-san, also,
19 probably.

20 Q. Did you take any steps to resolve
21 these communication issues?

22 MS. COLWIN: Objection.

23 A. Yes.

24 Q. What steps did you take to resolve it?

25 A. I spoke to Jennifer.

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2 Q. What did you say to her?

3 A. I said -- I reminded her again of the
4 strategy and the importance of communicating, and
5 that we should have -- we need to keep them close.
6 I did not tell her that I received a complaint.

7 MR. BERMAN: Okay. The next exhibit
8 is 54.

9 (Plaintiff's Exhibit 54, multipage
10 document Bates stamped DEF-1419 to 1421,
11 marked for Identification, as of this date.)

12 MR. BERMAN: This is a multipage
13 document Bates stamped DEF-1419 to 1421.

14 Q. Mr. Oliva, are you looking at the
15 document?

16 A. Yes.

17 Q. Have you seen it before?

18 A. Yes.

19 Q. Can you tell me what it is?

20 A. Let me just read it for a second.

21 Okay.

22 Q. Have you seen this document before?

23 A. Yes.

24 Q. Can you tell me what it is?

25 A. Yes. It's Tomoji complaining about

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2 the handling of the matter, and questioning Josh's
3 capability and whether he's the right litigator,
4 and whether this is going according to plan, and
5 whether we should consider changing outside
6 counsel firms.

7 Q. Okay. In response to these
8 communications, did you take any steps to
9 remediate Mr. Minami's concerns?

10 A. I think this happened before the other
11 one. I think I did have several conversations --
12 again, from the very beginning, I was very clear
13 with Jennifer and Josh when I spoke to him
14 directly about the strategy of this case. And you
15 can see, essentially, what I communicated to them
16 multiple times is here. We should remain calm.
17 We should not be combative. We should not make
18 this case into something bigger than it is. It's
19 a breach of contract case. Bring them to the
20 table, let's negotiate, let's understand what
21 success looks like, let's maintain our composure.

22 And you can see in here that I also
23 say, I toned down the language of that filing
24 myself to make sure that the tone was serious, but
25 did not want us to appear combative, right? This

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2 is very simple; just remain calm and appropriate
3 in your communication.

4 So this is me responding that,
5 essentially, look, outside coun -- Josh is a
6 litigator, right? This is what he does. He
7 fights. Right? And that's fine. That's his job.
8 I don't have any problem with the way he's doing
9 it. We're managing it. I'll manage it. I'll
10 tone it down myself. So I don't think we need a
11 different outside counsel. I think we're in good
12 hands.

13 And, to your question, I had been
14 communicating about that strategy and that tone
15 from the beginning. I'm confident that after I
16 received this, because now the client is upset and
17 he says specifically, Takimoto-san is skeptical
18 about Josh, right? Takimoto-san is asking
19 questions, do we have the right outside counsel
20 here? That's pretty serious, if my job is to make
21 sure that my client trusts us to handle litigation
22 in the U.S.

23 So, I say, don't worry, I'm involved
24 myself, it's okay, and, yes, I'm confident that
25 after this and after the other, and all the way

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2 through, I reminded Josh and Jen -- Jennifer, and
3 Josh when I spoke to him directly, remember who we
4 are, remember how we comport ourselves.

5 Q. After this communication and the one
6 that we just looked at in the prior Exhibit 53,
7 did you provide Mr. Takimoto with any reassurances
8 directly?

9 MS. COLWIN: Objection.

10 Q. Meaning other than through Mr. Tomoji,
11 because you indicated this was a serious concern,
12 right?

13 A. I did not communicate directly to
14 Takimoto-san about this.

15 Q. Okay. Thank you.

16 A. And if you want the spelling for
17 Utsunomiya-San, it's here. I got it wrong when I
18 tried to do it by memory. It's
19 U-T-S-U-N-O-M-I-Y-A.

20 MR. BERMAN: I've got a series of
21 documents here. What's the next one, 55?

22 THE REPORTER: 55.

23 MR. BERMAN: Wait. This one is
24 previously marked as 14. Let's go with the
25 original.

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2 THE WITNESS: Okay.

3 Q. Have you seen this document before?

4 A. Yes.

5 Q. Can you tell me what it is?

6 A. Yes. This is me very specifically
7 requiring written authorization to attend the ENE
8 in that capacity as the business representative
9 with authority to settle.

10 Q. Is this a communication concerning
11 consideration of potential settlement amounts?

12 A. This is specific to the ENE document
13 that I would hold, right? And bring on behalf of
14 the business. So this is me saying I want -- I
15 need a document that says I have unlimited
16 authority. Right? That's what the court
17 requires. I need to be able to speak for the
18 company.

19 I asked Josh. He says a board
20 resolution makes sense. I know how it works in
21 Japan. It's not like here. It takes a while to
22 get on the agenda. I don't know if we'll be able
23 to do that. That's why I say, is it possible?
24 But I want written confirmation. I want it to be
25 very, very clear. For the purpose of going to

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2 this, right, I need -- I need this.

3 So, Tomoji says, can you write it for
4 us? And I say, you know, essentially, I'll --
5 basically, I asked Jennifer, or Jennifer to Josh
6 to write it. And he -- and I say here, I might
7 propose an amount and higher, right? If we have
8 to have an amount in there, what I'm supposed to
9 go with is unlimited, right? So I would like
10 unlimited.

11 Q. Okay. So this was in the context of
12 your requesting a board resolution?

13 A. This is in my -- this is in the
14 context of me requesting the document that I can
15 bring to the ENE that shows I have unlimited
16 authority.

17 Q. And to get that, you contemplated a
18 board resolution?

19 A. Yes.

20 Q. Okay.

21 A. Of MCC.

22 Q. Understood. Thank you.

23 This is prior to the first settlement
24 conference or the second settlement conference?
25 It's dated November 4, 2016 on the top of the

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2 first page.

3 A. It's got to be the first.

4 Q. I'm going to show you Exhibit 15. It
5 should be --

6 A. This seems to be a continuation of
7 that, because I have the originals here, and then
8 some more.

9 MR. BERMAN: Let the record reflect
10 that the witness is reviewing an exhibit
11 previously marked as Plaintiff's 15.

12 Have you seen this document before?

13 A. Yes.

14 Q. Can you tell me what it is?

15 A. It's a continuation of the e-mail
16 chain that we just talked about.

17 Q. Okay. And directing your attention to
18 the second page marked DEF-1859.

19 Do you see a reference to 1.5 MM to
20 2.0 MM?

21 A. Yes.

22 Q. Are those numbers representative of
23 millions of dollars, where it says MM?

24 A. Yes.

25 Q. So is this a discussion of settlement

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2 authority on the Genomatica matter?

3 MS. COLWIN: Objection.

4 A. Let me see if that's what it is.

5 Q. Okay.

6 A. I say, I will try to negotiate as much
7 as possible, but I need the authorization granted.
8 I have to have it in writing. I have to know what
9 it is. I'm not doing it without it. I'm not
10 going there. I'm not getting on a plane without
11 it. And he says, it depends on Takimoto, based on
12 what we hear from Josh and Jennifer, and what we
13 start at the beginning, our position is very
14 strong. So if we go to trial -- this is what he
15 says -- it means that we are likely to win and get
16 one and a half to 2 million if we go to trial.
17 Deducting legal fees of, you know, roughly half a
18 million. That's why I think we're probably not
19 going to ask. Takimoto will not ask for less than
20 1 million at this point.

21 Q. Okay. I don't see the word trial in
22 here, so is that your interpretation of the
23 meaning?

24 A. We are likely to win.

25 Q. So it's based on the word win?

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2 A. Yes.

3 MR. BERMAN: Okay. You can set this
4 one aside. Now we'll look at 16. Handing
5 the witness what has been previously marked
6 as Plaintiff's Exhibit 16.

7 The witness has been handed an exhibit
8 previously marked as Plaintiff's 16.

9 THE WITNESS: Yes. I know what this
10 is.

11 Q. Can you tell me what this document is?

12 A. Yes. This is me taking great care to
13 be appropriate and compliant and make sure I have
14 what I need before I make any action on behalf of
15 MCC.

16 I heard from MCC that they want, you
17 know, not less than a million, or that's what
18 they're thinking, they might be entitled to, you
19 know, a win. They might think they're going to
20 win, and that might be 2 million minus 500K.

21 And I write to Josh and say, I need a
22 little help here, because I'm going to go there
23 and tell the ENE that I have full and complete
24 settlement authority, what is my authority? Can
25 you please draft it so that I have what I need for

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2 that ENE. That's why I say, but note the
3 financial limitation language in the text. My
4 reading is, I need to go there with full
5 authority.

6 Q. Did this language ultimately make it
7 into the document that you received to authorize
8 you to participate in the ENE?

9 A. Josh drafted appropriate language.

10 MR. BERMAN: I'm going to show you
11 Plaintiff's Exhibit 13. The witness has
12 been handed an exhibit previously marked as
13 Plaintiff's Exhibit 13.

14 Q. Mr. Oliva, have you seen this document
15 before?

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. This is the authorization letter that
19 I specifically requested giving me full authority
20 for the purposes of the ENE on that date.

21 Q. So this was for the first of the two
22 settlement conferences?

23 A. Yes.

24 Q. Was a copy of this letter provided to
25 Ms. Fischman at any point?

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2 MS. COLWIN: Objection.

3 A. I don't know the answer to that.

4 Q. Do you know if this would have been in
5 to the file for the matter?

6 A. I think she was probably copied on the
7 receipt of these documents from MCC.

8 Q. Okay. Thank you.

9 A. But I don't know for sure.

10 MR. BERMAN: Thank you. I think we're
11 going to move on to Exhibit 17.

12 The witness has been handed a copy of
13 an exhibit previously marked as Exhibit
14 Plaintiff's 17.

15 Q. Are you looking at the document?

16 A. I am.

17 Q. Have you seen it before?

18 A. Yes.

19 Q. Can you tell me what it is?

20 A. This is Jennifer communicating to the
21 client that we need this letter that I have
22 requested drafted by Josh Berman, presumably.

23 Q. If you turn to the very first page of
24 the document, do you see at the top where it says,
25 from Nicholas, and then it has U.S.A. 7375, and

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2 then it says Oliva?

3 Does this reflect an e-mail that you
4 sent to Jennifer and Tomoji and copied Mr. Berman
5 and Mr. Jouhei on? I'm looking at the very first
6 page of the document marked Plaintiff's 17.

7 Are we on the same --

8 A. Yes.

9 Q. Okay.

10 A. But you're asking me if this e-mail is
11 reflected in the body of the e-mails on the second
12 page, so.

13 Q. Okay. The bottom of the very first
14 page, where it says, Dear Takimoto-san and Tomoji,
15 is that a communication from you?

16 A. I'm not sure, because my e-mail is to
17 Jennifer up here, copying Josh. But, yes,
18 clearly, when you turn the page, this says, best
19 regards, Nick. Josh and I spent over four hours
20 in a settlement conference with the judge today.

21 Q. So I see that Tomoji Minami is one of
22 the recipients on the "to" line on the first page?

23 A. Correct.

24 Q. So did you perhaps intend to have
25 Mr. Minami pass this on for you?

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2 A. Takimoto-san's copied.

3 Q. Are we looking at the same thing? I'm
4 looking --

5 A. Yes.

6 Q. -- at Plaintiff's Exhibit 17 and I'm
7 looking --

8 A. Takimoto-san's copied under c.c.,
9 under Josh Berman.

10 Q. Oh, that Mr. Johei Takimoto, okay,
11 that's what you're referencing as c.c. I see.
12 Okay.

13 A. No problem.

14 Q. No, I just -- because I was looking at
15 the "to" line. Okay.

16 A. I probably should have put
17 Takimoto-san in the "to" line and Jennifer in the
18 copy line.

19 Q. Okay. Thank you for clarifying.

20 MR. FORTINSKY: And I believe you had
21 pronounced Jo-Hay (phonetic) the other day.

22 THE WITNESS: Yes.

23 Q. Is this communication an accurate
24 reflection of the status of the matter at the time
25 this communication was sent?

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2 A. I would expect it was.

3 Q. Do you see the sentence in the middle
4 of the first full body, beneath the redaction? It
5 states, "we finally offered 2.0, with deferred
6 payments over time and interest)."

7 Do you see that statement?

8 A. Uh-huh.

9 Q. Was there a settlement offer of 2.0
10 million dollars made in connection with this
11 matter?

12 MS. COLWIN: Objection.

13 A. It says what it says. I don't recall.

14 Q. What I'm asking is, does the 2.0 refer
15 to \$2 million?

16 A. That would be million.

17 Q. All right. That's my question. Okay.

18 MR. VALLI: And just to clarify,
19 Matthew, it wasn't offered, it was demanded.
20 And I hate when they do this all the time.

21 MR. BERMAN: Okay. Understood. The
22 text says offered, that's why.

23 Let's move on.

24 (Plaintiff's Exhibit 55, a three-page
25 document Bates stamped DEF-002307 through

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2 002309, confidential, marked for
3 Identification, as of this date.)

4 MR. BERMAN: For identification, this
5 is a three-page document Bates stamped
6 DEF-002307 through 2309.

7 THE WITNESS: Okay.

8 Q. Are you looking at the document?

9 A. Yes.

10 Q. Have you seen it before?

11 A. Yes.

12 Q. Can you tell me what it is?

13 A. This is Josh reporting to us that we
14 have the opportunity to make our demand, right?
15 That the case is going well for us. He says, they
16 are scared. So he proposes a counter.

17 Q. Do you see the line there that says,
18 "shall we discuss," from Mr. Berman to
19 Ms. Fischman, and copying you?

20 A. Yes.

21 Q. Was there ultimately a discussion
22 resulting from this communication?

23 A. I don't recall.

24 Q. Okay.

25 A. I say, "let's talk tomorrow," so

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2 presumably -- I don't know.

3 Q. Now, turning to the top of the first
4 page, there's a comment from Ms. Fischman to Josh.
5 It says, "this is a meaningful start. It's still
6 worse than where we were before litigation."

7 Do you know what that means?

8 A. Yes. This is Jennifer's reaction.
9 She goes very aggressively. So in the face of
10 good news, I say "excellent," basically saying it
11 looks like we're going to be able to resolve this
12 and maybe even have a meaningful business
13 relationship with Genomatica going forward. And
14 Jennifer's reaction is, you know, this is
15 nothing -- you know, this is meaningful, but it's
16 still worse. And I think she's probably intending
17 to ask for more, be more aggressive. So that's
18 what I expect she meant by this.

19 Q. Do you have any understanding of why
20 there would be a comment that this was worse than
21 before litigation? Do you know what that means?

22 MS. COLWIN: Objection.

23 A. I think that if you add everything up,
24 it may have been closer to 3 million total that
25 was owed. But, of course, we have attorneys' fees

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2 and other costs and things, of course, so.

3 Q. Okay. Thank you.

4 A. She may have not been considering the
5 entire picture.

6 Q. I'm going to hand you an exhibit
7 that's previously marked Exhibit 18. Plaintiff's
8 18.

9 A. This answers your question before
10 about whether there was a meeting. I wasn't
11 included. Jennifer said specifically she spoke to
12 Josh.

13 Q. I'm sorry, what are you looking at
14 right now? Are you looking at page 18 --

15 A. 1810. Yeah.

16 I spoke to Josh briefly. So Josh
17 says, "shall we discuss?" What's missing is me
18 saying, sure, tomorrow. That's intervening.
19 Jennifer writes to me, "I spoke to Josh."

20 So your question before was, was there
21 a meeting. There was a meeting, but I wasn't
22 included.

23 Q. Okay. And that's the communication
24 dated 12/29/2016 that you're referring to at the
25 bottom of the second page?

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2 A. Yes.

3 Q. And then up above that, there's a
4 communication from you to Jennifer saying,
5 "Thanks. Isn't that asking for everything and not
6 settlement?"

7 A. Exactly.

8 Q. What does that communication mean?

9 A. This is me challenging Jennifer that
10 if -- you know, let's get back to the strategy of,
11 yet again, what's the point of this litigation?
12 What are we trying to do here? What are we trying
13 to accomplish?

14 Now that Josh has said, "looks like
15 they're scared," Jennifer is going all in, you
16 know, let's get as much as we can, that kind of
17 very aggressive tone, which was not the strategy
18 from the beginning. This was a simple case.

19 And what she says here is, I don't
20 want to counter with anything less than 2.5 and a
21 royalty license. And that's why I write back,
22 well, wait a minute. If the entire -- I didn't
23 write all of the principals here, but if the
24 entire case is roughly worth, you know, 3 million,
25 and we have to pay attorneys' fees and everything,

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2 are you actually moving towards settlement? Are
3 you actually moving this case along in a
4 meaningful way for the client that we have?

5 I understand that strategy. I
6 understand going for more, but that's not what we
7 talked about this entire time. So aren't you
8 asking for everything and not reasonably, you
9 know, providing a settlement conversation?

10 Q. Okay. Then directing your attention
11 to the bottom of the first page. Does this
12 reflect an e-mail from Jennifer to you dated
13 December 29, 2016?

14 A. Yes.

15 Q. Where she says in the body of the
16 message -- she's responding to your query, right,
17 and she says, "well, not really, because we are
18 giving up interest (500K) and the patents and the
19 lawsuits. \$1.5 over 4 years doesn't get it done
20 either, right? But we can discuss how to approach
21 on Tuesday."

22 Do you have an understanding of what
23 was meant by this communication?

24 MS. COLWIN: Objection.

25 A. I don't know what Jennifer meant, but

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2 she's responding to me saying, aren't you asking
3 for everything? And she comes back and says, no,
4 I don't think I'm asking for everything. But, in
5 my opinion, going at them with 2.5 was maybe a
6 lot.

7 Q. Okay.

8 A. But again, I'm questioning, right?
9 This is not me demanding. I'm saying, aren't you
10 asking for a lot? Is that really settlement?

11 Q. Okay. And the bottom line there where
12 it says, "but we can discuss how to approach on
13 Tuesday." Did you have a subsequent discussion on
14 Tuesday?

15 A. I don't remember.

16 Q. So the Tuesday after December 9th
17 would have been January 3rd. Do you know if you
18 had a discussion with Ms. Fischman on January 3rd?

19 A. I don't remember.

20 Q. Do you know if you had a discussion
21 with Ms. Fischman in connection with that
22 communication she sent any time that week?

23 A. I don't think so. I don't remember.

24 Q. Do you know if you had a discussion
25 with Ms. Fischman concerning the Genomatica matter

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2 on January 5th?

3 A. I don't think so.

4 Q. What do you mean you don't think so;
5 is that a yes or a no? I don't understand what
6 you're --

7 A. Well, I said I don't think so many
8 times before. This is the first time you're
9 asking what I mean by it. It means I don't think
10 I had that meeting, but I don't recall.

11 Q. Okay. Do you recall being present at
12 an unemployment insurance hearing in connection
13 with Ms. Fischman's application for employment
14 insurance benefits?

15 A. Yes.

16 Q. Do you recall telling the
17 administrative law judge that there was a meeting
18 on January 5th?

19 MS. COLWIN: Objection.

20 A. No.

21 MR. BERMAN: Mark this as 56.

22 MS. COLWIN: Do you have the whole
23 transcript?

24 MR. BERMAN: I mean, I could produce
25 the entire transcript. I've provided an

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2 excerpt which contains the material before
3 and after. I think that's --

4 MS. COLWIN: All right. Let me see --

5 MR. BERMAN: -- sufficient. We can
6 pull out the entire transcript, if you want.
7 I don't think it's really necessary.

8 (Plaintiff's Exhibit 56, a multipage
9 document, first page being the cover page of
10 a hearing transcript dated September 7,
11 2017, followed by excerpts, marked for
12 Identification, as of this date.)

13 MR. BERMAN: For identification,
14 Plaintiff's 56 is a multipage document. The
15 first page is the cover of a transcript of a
16 hearing dated September 7, 2017 in the
17 matter of Jennifer Fischman and Mitsubishi
18 Chemical Holdings, case number 17-13333.
19 And the second page, and thereafter, are the
20 portions of the transcript that are
21 excerpted from page 60 consecutively through
22 page 65, and the witness is looking over the
23 exhibit.

24 Q. Let me know when you're ready.

25 A. Okay.

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2 Q. Mr. Oliva, do you recall giving
3 testimony at an unemployment insurance hearing on
4 September 7, 2017?

5 A. Yes.

6 Q. Do you have any reason to believe that
7 the transcript excerpt that you're looking at is
8 inaccurate in any way?

9 MS. COLWIN: Objection.

10 A. No.

11 Q. So are you aware that Ms. Fischman
12 claims that she had a meeting with you on or about
13 January 5th of 2017 concerning the Genomatica
14 matter?

15 MS. COLWIN: Objection.

16 A. Yes.

17 Q. Do you know whether such a meeting
18 took place?

19 A. I don't recall.

20 Q. Okay. Did you have a discussion with
21 Ms. Fischman at any point in January of 2017
22 concerning a \$2.3 million settlement demand in
23 connection with the Genomatica matter?

24 A. I think by e-mail. I think there's an
25 e-mail conversation around 2.3. But, again, all

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2 subject to --

3 Q. Is that one --

4 A. -- MCC --

5 Q. -- of the e-mails we looked at today?

6 MS. COLWIN: Don't interrupt him,

7 Matt.

8 MR. BERMAN: I'm sorry.

9 MS. COLWIN: Leave him finish his
10 answer.

11 Q. Did you finish your --

12 MS. COLWIN: "All subject to MCC" is
13 what I heard. I don't know if Bonnie got
14 it.

15 THE REPORTER: Yes.

16 Q. Did you have an opportunity to
17 complete your response?

18 A. I think so.

19 MS. COLWIN: Would you read back his
20 response, just to make sure.

21 (Whereupon, the requested answer was
22 read back by the reporter.)

23 Q. Is that based upon the e-mail or based
24 upon a verbal conversation that you had?

25 A. Is what based upon an e-mail or what

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2 based upon a verbal?

3 Q. Your last response indicated that
4 there was an e-mail communication concerning a
5 settlement demand of \$2.3 million, correct?

6 MS. COLWIN: Objection.

7 A. I said there may be an e-mail that
8 talks about the number 2.3.

9 Q. Okay. That's not one of the documents
10 we've looked at today, is it?

11 A. I don't recall.

12 RQ MR. BERMAN: I don't think so.

13 To the extent it hasn't already been
14 produced, we call for the production of any
15 communication representing a \$2.3 million
16 offer.

17 MS. PRIMAVERA: It's in there.

18 Q. And then with respect to the portion
19 of your response that said subject to -- how did
20 you phrase it? Subject to what?

21 A. MCC's approval. They're the client.

22 Q. Okay.

23 A. We can talk all we want about what
24 might be acceptable or what might be appropriate,
25 but, ultimately, MCC is the client. You saw the

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2 lengths to which I went to make sure I had very
3 clear authority to go to that ENE for a very
4 specific day.

5 Q. Okay. The portion of your response
6 focussed on the approval of MCC, is that in a
7 written communication somewhere?

8 MS. COLWIN: Objection.

9 A. I don't know.

10 Q. Do you have any written material
11 reflecting your admonishment to Ms. Fischman to
12 obtain the client's approval in connection with a
13 \$2.3 million settlement demand?

14 MS. COLWIN: Objection.

15 A. Number one, I would say I don't need
16 that, because she's a lawyer, and lawyers have to
17 get the authority of settlement from their
18 clients, and that's really clear. That's not
19 something you have to talk about every day. But
20 it is something that I communicated with Jennifer
21 about very carefully on multiple occasions, that,
22 given this client, given this situation, given the
23 level of trust, we have to make sure they're
24 aware.

25 And you see two complaints that

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2 they're saying, what's going on? We don't even
3 know what's happening. So, yes, I am confident I
4 communicated to Jennifer that they should know all
5 relevant details and material.

6 MR. BERMAN: I object to the portion
7 of your response that's not responsive to my
8 question, which is whether you have any
9 writings contemporaneous with that
10 instruction to Ms. Fischman.

11 MS. COLWIN: I'm just going to object
12 to that.

13 MR. BERMAN: You can object.
14 You can answer.

15 Q. Do you have any writings that reflect
16 that?

17 A. I don't know.

18 Q. In your capacity as an attorney,
19 either at MCC -- excuse me -- either at MCHA or at
20 Bristol-Myers Squibb or at your subsequent
21 position at -- how do you pronounce it?

22 MS. COLWIN: Catalent.

23 Q. Catalent? In any of those positions,
24 were you primarily responsible for litigating
25 matters?

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2 MS. COLWIN: Objection.

3 A. No.

4 Q. Okay.

5 A. We had litigation groups, very big
6 departments, like 200 lawyers, as opposed to MCHA
7 that had, as you know, less than ten.

8 Q. So have you ever personally litigated
9 a matter where you obtained settlement authority
10 on behalf of a client?

11 Have you ever personally litigated a
12 matter where you have received settlement
13 authority from a client?

14 MS. COLWIN: Objection.

15 A. Not that I recall.

16 Q. But you have an understanding about
17 how settlement authority works, correct?

18 A. Indeed.

19 MS. COLWIN: Objection.

20 Q. Okay. So in the face of an express
21 authorization to make a settlement demand, doesn't
22 an attorney have discretion to make any settlement
23 offer or demand within that expressed grant of
24 authority?

25 MS. COLWIN: Objection.

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2 A. That's not what happened here.

3 Q. That wasn't my question, sir.

4 A. It depends on the circumstance.

5 Q. Well, we looked earlier at a grant of
6 authority in connection with an ENE, right? And I
7 understand that your position is that that grant,
8 although it's couched in terms that are express,
9 was more limited; is that a fair characterize?

10 MS. COLWIN: Objection.

11 A. It's specific to the ENE.

12 Q. Okay. We -- I think we agree on that.
13 I don't think that's in dispute, that your
14 position is that it's confined to the ENE, right?
15 Is that a fair representation?

16 MS. COLWIN: Objection.

17 A. That it's not just my position. It
18 says so in the document.

19 Q. Well, would you care to look at the
20 document again? What number was that, 13?

21 A. The document speaks for itself.

22 Q. All right. Then, that's fine.

23 So, if you had a document with an
24 express grant of authority to settle the matter
25 for 2.0 million or higher, can we agree that you

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2 have authority to make a demand of 2.1 million?

3 MS. COLWIN: Objection. Don't answer
4 hypotheticals. You can mark it for a
5 ruling.

6 MR. BERMAN: You can answer, unless
7 you're instructed not to by counsel.

8 MS. COLWIN: Don't answer any
9 hypotheticals. We'll get a ruling.

10 MR. BERMAN: Is that an instruction
11 not to answer?

12 MS. COLWIN: Yes.

13 RL MR. BERMAN: Okay. Please mark it for
14 a ruling.

15 Q. Do you know whether you were in the
16 office on January 5th of 2017?

17 A. I don't recall.

18 Q. Would there be any written record that
19 would reflect whether you were in the office on
20 that day?

21 A. I don't know.

22 Q. Do you know whether Ms. Fischman was
23 in the office on January 5th, 2017?

24 A. I don't recall.

25 Q. Do you know whether there would be any

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2 written record that would reflect whether she was
3 in the office that day?

4 A. Same answer.

5 Q. Do you know whether you were in the
6 office on January 10th of 2017?

7 A. I don't recall.

8 Q. Would there be any written record that
9 would reflect your presence in the office that
10 day?

11 A. Same answer.

12 Q. Do you know if Ms. Fischman was in the
13 office on January 10th of 2017?

14 A. Same answer.

15 Q. Would there be any written record that
16 would answer that question?

17 A. Same answer.

18 Q. Do you know whether Mr. Takimoto came
19 to visit MCHA on January 10th of 2017?

20 A. I know Takimoto-san came to visit. I
21 don't know if it was January 10th.

22 Q. On the occasion Mr. Takimoto's visit,
23 did you greet him?

24 MS. COLWIN: Objection.

25 A. I'm sure I was not the first person to

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2 meet with Takimoto-san.

3 Q. Okay. Setting apart who met with him
4 first, did you meet him that day?

5 A. I did.

6 Q. Can you place in time for me
7 approximately when that visit took place?

8 A. What time during the day?

9 Q. No. What time of the year did that
10 take place?

11 A. Oh. I don't recall exactly.

12 Q. Did Mr. Takimoto visit --

13 A. I think it was January. Sorry.

14 Q. So, to the best of your recollection,
15 Mr. Takimoto visited approximately in January of
16 2017?

17 A. That sounds right.

18 Q. Do you know whether it was before
19 January 19, 2021?

20 A. I don't recall.

21 MR. VALLI: January 19, 2017.

22 MR. BERMAN: Sorry. Thank you.

23 Q. Do you know whether Mr. Takimoto
24 visited MCHA before January 19 of 2017?

25 MS. COLWIN: Objection.

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2 A. I think the answer is yes.

3 Q. Okay. Was there --

4 A. Because I'm starting to recall that --
5 the events of January 19. So I think it was yes.

6 Q. Okay. So on the occasion of
7 Mr. Takimoto's visit, did you have a meeting with
8 him?

9 A. Yes.

10 Q. Who was present at the meeting?

11 A. Jennifer.

12 Q. Was anyone else present?

13 A. No.

14 Q. Was the Genomatica matter discussed at
15 that meeting?

16 A. Yes.

17 Q. Was there any discussion of the amount
18 of any settlement demand in the Genomatica matter
19 at that meeting?

20 A. No.

21 Q. Without revealing any privileged
22 communications, are you able to convey to me what
23 was discussed during that matter -- during that
24 meeting? Excuse me.

25 A. Yes. As is typical when an executive

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2 from Japan travels, they meet with the teams that
3 are supporting them, and they use the New York
4 office for that purpose. And Jennifer and I were
5 working on matters for Takimoto-san and MCC,
6 including Genomatica.

7 So, I do recall meeting with him for a
8 short period of time and talking at a high level
9 about the matters and the strategy and the status
10 and those kinds of things. It was a -- kind of a
11 typical meet-and-greet conversation about status
12 and potential -- potential outcome, and maybe next
13 steps, those kinds of things.

14 Q. Did you take any notes in connection
15 with that meeting?

16 A. I don't think so. It's possible.

17 Q. If you took those notes, where would
18 they be?

19 A. Produced.

20 Q. I mean, would they be in your files at
21 work?

22 A. No. It would be by e-mail, or I would
23 have written -- as I mentioned before, if I took
24 notes about that meeting, I would have either
25 written to Takimoto-san, saying it's nice to meet

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2 you, as we discussed, ABC, or I would have written
3 a note to myself by e-mail.

4 RQ MR. BERMAN: To the extent they
5 haven't been produced already, we call for
6 the production of any notes of the meeting
7 just described by the witness.

8 Next exhibit, please.

9 (Plaintiff's Exhibit 57, a two-page
10 document Bates stamped DEF-002315 through
11 002316, confidential, marked for
12 Identification, as of this date.)

13 MR. BERMAN: For identification,
14 Plaintiff's 57 is a two-page exhibit Bates
15 stamped DEF-002315 through 16.

16 Q. Are you looking at the document?

17 A. Yes.

18 Q. Have you seen it before?

19 A. Yes.

20 Q. Can you tell me what it is?

21 A. This is Genomatica making an offer and
22 Josh countering with a settlement offer on behalf
23 of MCC.

24 Q. Okay. Do you see in the reference to
25 the body, there's a mention of a 2.3 million

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2 figure?

3 A. Yes.

4 Q. Is that the \$2.3 million e-mail that
5 you were referring to previously?

6 MS. COLWIN: Objection.

7 A. No.

8 Q. There's a separate communication?

9 MS. COLWIN: Objection. That's not
10 his testimony.

11 Q. Were you referring to something else?

12 A. I think there's a document or an
13 e-mail concerning the possibility of 2.3 that's
14 not this document.

15 Q. Okay. If we should come across that
16 document during the remainder --

17 A. Uh-huh.

18 Q. -- of your testimony, will you please
19 let me know?

20 A. Yes.

21 MR. BERMAN: That's it. Let's move on
22 to the next one.

23 (Plaintiff's Exhibit 58, a three-page
24 document Bates stamped DEF-000884 through
25 000886, marked for Identification, as of

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2 this date.)

3 MR. BERMAN: For identification,
4 Plaintiff's 58 is a three-page document
5 Bates stamped DEF-000884 through 886.

6 THE WITNESS: Okay.

7 Q. Are you looking at the document?

8 A. Yes.

9 Q. Have you seen it before?

10 A. Yes.

11 Q. Can you tell me what it is?

12 A. This is Tomoji complaining that they
13 were surprised at the meeting the night before
14 that Josh had made a settlement offer without
15 their approval.

16 Q. Okay. Is there a time difference
17 between the U.S. and Japan?

18 A. Yes.

19 Q. Do you know what it is?

20 A. It's approximately 12 or 13 hours.

21 Q. Depending on where in Japan you are?

22 A. Depending on time -- depending on
23 daylight savings.

24 Q. With respect to the time difference
25 between New York and Tokyo, do you know what it

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2 is?

3 A. Depends on whether it's daylight
4 savings or not.

5 Q. And if it's daylight savings, what is
6 it?

7 A. I think it's 13 hours, so, right now,
8 I think it's plus one. I think it's a 13-hour
9 difference.

10 Q. When it's daylight savings, what is
11 it?

12 A. I'm not sure.

13 Q. Okay.

14 A. I looked it up on an app to make sure
15 I have the right time.

16 MR. BERMAN: Thank you. You can set
17 this aside.

18 Q. This is not the \$2.3 million e-mail
19 you referenced earlier, right?

20 MS. COLWIN: Objection.

21 A. Correct.

22 MR. BERMAN: New exhibit.

23 (Plaintiff's Exhibit 59, a two-page
24 document Bates stamped DEF-844 through 845,
25 confidential, marked for Identification, as

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2 of this date.)

3 MR. BERMAN: For identification,
4 Plaintiff's 59 is a two-page document Bates
5 stamped DEF-844 through 845.

6 Q. Are you looking at the document?

7 A. Yes.

8 Q. Have you seen it before?

9 A. I have.

10 Q. Can you tell me what it is?

11 A. This is me having seen Tomoji's
12 complaint, communicating to Jennifer while I was
13 in Donna Costa's office that Josh may have made an
14 offer without approval, and I giving Jennifer the
15 benefit of the doubt, saying, Jennifer, I don't
16 know what's happened here, but did Josh send out
17 information about a 2.3 offer without approval
18 from MCC.

19 And Jennifer's response. Yes, I,
20 Jennifer authorized it, because I was home sick,
21 because the day for a response came, because you
22 and I had discussed, I thought it was consistent
23 with MCC, so I authorized him to make it.

24 Q. Okay.

25 A. I, Jennifer.

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2 Q. Did you respond to this message?

3 A. Did I respond to this message? I --
4 did I respond to this message? I'm not sure. We
5 could look. I'm sure that's it.

6 Q. Okay. There's a comment here that you
7 just read that included you -- it says on the
8 document "you and had discussed." You read it a
9 little differently, right?

10 A. Uh-huh.

11 Q. So do you have any -- what was your
12 understanding of what she meant by that?

13 MS. COLWIN: Objection.

14 A. Yeah, I don't know what my
15 understanding was at the time. Probably that she
16 thought we had discussed, which is not the same
17 thing as getting authority of the client.

18 Q. Did you and Jennifer discuss the
19 issue?

20 A. Well, you can see from the --

21 MS. COLWIN: Objection.

22 A. -- from the e-mail before, there's a
23 discussion where I say, aren't you asking for
24 everything?

25 MR. BERMAN: Okay. Let's go to the

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2 next exhibit.

3 (Plaintiff's Exhibit 60, a two-page
4 document Bates stamped 842 to 843,
5 confidential, marked for Identification, as
6 of this date.)

7 MR. BERMAN: For identification,
8 Plaintiff's 60 is a two-page document Bates
9 stamped 842 to 843. DEF-842 to 843.

10 THE WITNESS: Okay.

11 Q. Are you looking at the document?

12 A. Yes.

13 Q. Have you seen it before?

14 A. Yes.

15 Q. Can you tell me what it is?

16 A. Yes. This is Jennifer, without
17 talking to me about how to handle this matter,
18 shooting off an e-mail to Tomoji saying that this
19 is her -- her mea culpa e-mail. This is her
20 saying that she was home sick and she thought it
21 was fine, and I believe there's no harm.

22 But this is, again, not with my input.
23 In fact, she didn't even copy me. And then
24 afterwards she said, oh, yeah, sorry, I didn't
25 copy you, but I sent a mea culpa e-mail to

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2 describe. This is Jennifer's admission that she,
3 by her authority, she sent a -- she directed Josh
4 to make a settlement offer without authority.

5 Q. This communication on the first page
6 is sent two minutes after the initial
7 communication, correct?

8 MS. COLWIN: Objection.

9 A. Yes. But you can imagine that any
10 reply to Jennifer here would not include me.

11 MR. BERMAN: Okay. Understood.

12 Let's go to the next exhibit here.

13 (Plaintiff's Exhibit 61, a two-page
14 document Bates stamped DEF-000485 through
15 486, confidential, marked for
16 Identification, as of this date.)

17 MR. BERMAN: For identification,
18 Exhibit 61 is a two-page document Bates
19 stamped DEF-000485 through 486.

20 Q. Are you looking at the document?

21 A. Yes.

22 Q. Have you seen it before?

23 A. Yes.

24 Q. Can you tell me what it is?

25 A. This is me communicating to Ken

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2 Fujiwara that I have to terminate Jennifer and the
3 reasons why.

4 Q. Do you see the part on the document at
5 the end of the second to last full paragraph, "I
6 plan to deliver the news of termination on Monday,
7 January 30th"?

8 A. Yes.

9 Q. So you wrote this on Sunday, January
10 22, correct?

11 A. Yes.

12 Q. What was the reason for delivering the
13 news eight days later?

14 MS. COLWIN: Objection.

15 A. It says so here. We had a preexisting
16 business trip to California, and I considered
17 whether I could call Jennifer in and terminate her
18 immediately, but it was -- that's not -- it wasn't
19 a feasible option, too disruptive to the business,
20 and not really possible, given everything we had
21 to do to prepare for that. So we determined to go
22 ahead with the business meeting and terminate her
23 on the return.

24 Q. What was the purpose of the trip?

25 A. So the primary purpose of the trip was

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2 to visit a company called Aldila, which is in the
3 carbon fiber business, and for me to communicate
4 to the president of that company that we were
5 going to not only essentially reduce their entire
6 workforce of approximately 40 people, but that we
7 hoped, and I was there to implore him, that
8 although he was also being terminated, that he
9 would deliver the news to people.

10 Q. Was there a secondary purpose of the
11 trip?

12 A. While we were in California, we -- of
13 course, you don't take a business trip, especially
14 on budgets like we have, internal legal
15 departments, without trying to make the most of
16 it. So we decided to visit as many of the carbon
17 fiber businesses as possible. And the reason --
18 the primary reason for that -- the primary reason
19 for the visit was the Aldila reduction and that
20 very sensitive conversation.

21 The primary reason to visit those
22 other companies was that, at this time, early
23 January '17, we were preparing for a significant
24 merger that would bring the Rayon group companies,
25 of which carbon fiber businesses were a apart,

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2 into the Mitsubishi Chemical Corporation group.

3 And so we had historically not had
4 very close relationships with them. They were
5 served by Mitsubishi Rayon Corporation. And as of
6 April 1, 2017, they were going to, and, in fact,
7 were merged in -- both in Japan and the U.S., a
8 merger that I handled from our office; and
9 visiting these clients was really important
10 because they were going to be part of the
11 consolidated group as of April 1. And only a
12 select few people at those companies actually knew
13 it.

14 And then the additional purpose, the
15 third purpose, would be, while we're there, to
16 deliver compliance training, to give us an
17 opportunity to meet people from, you know, factory
18 line folks to executives, and talk to people about
19 legal and compliance subjects. It also helps,
20 because when you're there, that's when people
21 sometimes open up and communicate to you.

22 Q. So with respect to the compliance
23 training portion that you just -- first of all,
24 did you have an opportunity to complete your
25 answer?

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2 A. Yes.

3 Q. With respect to the compliance
4 training portion of your response, was
5 Ms. Fischman responsible for delivering that
6 training?

7 MS. COLWIN: Objection.

8 A. She was primarily responsible for
9 delivering content. Typically, I offered a tone
10 from the top style message, which is an element of
11 an effective compliance program. So the chief
12 compliance officer greeting and giving an
13 introduction, and then turning over the content
14 delivery of the prepared slides to Jennifer.

15 Q. So did she deliver the content?

16 A. Yes.

17 Q. Did she author the content?

18 A. I don't know who authored the content
19 originally. It was probably Donna that authored
20 that content originally, and it was modified over
21 the years. I'm sure Jennifer modified the content
22 over time.

23 Q. Did that content include ethics?

24 MS. COLWIN: Objection.

25 A. That content included a range of

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2 compliance and legal subjects for business side
3 folks. The code of conduct style training.
4 Discrimination and harassment. Anti-corruption.
5 The basics of antitrust or competition law. And
6 doing business with integrity, yes. Certainly not
7 attorney ethics or settlement communications.

8 Q. Well, no one in MCHA would be
9 delivering attorney ethics training to an
10 affiliate, would they?

11 A. No.

12 MS. COLWIN: Objection.

13 MR. BERMAN: Next exhibit.

14 THE REPORTER: 61.

15 (Plaintiff's Exhibit 61A, a one-page
16 document Bates stamped DEF-000487,
17 confidential, marked for Identification, as
18 of this date.)

19 Please mark this portion of the
20 transcript confidential, and obviously
21 Counsel can make any additional designations
22 confidential pursuant to the --

23 MS. COLWIN: I believe all of the
24 documents just about -- yes, they're all
25 Bates stamped confidential, so.

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2 MR. BERMAN: We have a confidentiality
3 agreement in this case, so all these will be
4 handled in accordance with that agreement.

5 Q. Are you looking at the document?

6 A. Yes.

7 MR. BERMAN: For identification, this
8 is a one-page document Bates stamped
9 DEF-000487.

10 Q. Can you tell me what this document is?

11 A. This is Ken's reply to my e-mail to
12 him saying that I had determined to terminate
13 Jennifer's employment, and his response.

14 Q. At this point in time, Ms. Fischman
15 was your subordinate, correct?

16 A. Yes.

17 Q. Okay. So why were you informing
18 Mr. Fujiwara of your determination?

19 MS. COLWIN: Objection.

20 MR. FORTINSKY: Objection.

21 A. Because Ken Fujiwara is the head of
22 the -- at that time, was the head of the
23 administration department, a very high-ranking
24 official, that oversaw human resources and legal
25 and other functions, and it would be appropriate

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2 for me to let him know that this was happening.

3 Also, you probably already know that
4 terminations at a Japanese company are really
5 serious issues, and they're very carefully
6 considered. So, it would be important for me to
7 notify Ken.

8 Q. Okay. You mentioned an administrative
9 department. Were you referring to a specific
10 entity?

11 A. MCHC.

12 Q. Did you confer with Ms. Costa prior to
13 making your termination decision?

14 MS. COLWIN: Objection.

15 A. In fact, that happened real time. I
16 was in Donna's office when I got the original note
17 from Tomoji, and I recall saying to Donna, I think
18 I have to fire Josh, and sending the e-mail to
19 Jennifer and saying, did Josh do this? And
20 Jennifer saying, no, I, Jennifer, did it.

21 And I turned to Donna and said, I
22 think I have to fire Jennifer. And then she sent
23 a mea culpa e-mail, without consulting with me, on
24 how we would mitigate the damage that she caused,
25 and that's when I said, I have to fire. Yeah, so

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2 I consulted with Donna real time.

3 Q. And she supported your decision,
4 correct?

5 A. Yes.

6 MR. VALLI: The one that is 487, will
7 be 61A.

8 MS. PRIMAVERA: Did you mean Defendant
9 487?

10 MR. VALLI: Yes. So, Defendant Bates
11 stamped 000487 is now remarked as
12 Plaintiff's Exhibit 61A. That is an e-mail
13 dated January 22, 2017, from Ken Fujiwara to
14 Nicholas Oliva.

15 MR. BERMAN: So, because we had an
16 issue with the mis-marking of an exhibit, we
17 had duplicate Exhibits 61, and the original
18 Exhibit -- the first Exhibit 61 was Bates
19 stamped DEF-485 through 486.

20 The witness was then presented with
21 the next exhibit, which was Bates stamped
22 DEF-487. The court reporter inadvertently
23 marked it with a duplicative label as
24 Plaintiff's 61, and so we've now renumbered
25 it 61A.

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2 So the record will reflect that the
3 witness's testimony with respect to document
4 Bates stamp DEF-487 is now relabeled and
5 remarked as Plaintiff's 61A.

6 Mark this, please.

7 (Plaintiff's Exhibit 62, one-page
8 document bates stamped Def 806 through 807,
9 confidential, marked for Identification, as
10 of this date.)

11 So the witness has now been handed a
12 document that's been marked Exhibit 62. It
13 is bates stamped Def 806 through 807.

14 Q. Mr. Oliva, are you looking at the
15 document?

16 A. Yes.

17 Q. Can you tell me what it is?

18 A. Yes. This is the record of what I
19 read to Jennifer on January 30th as part of her
20 termination, and then the notice -- the notes from
21 that day based on the conversation that ensued,
22 with Pat Saunders present.

23 Q. So the information on the first page,
24 did you deliver that to Ms. Fischman on January
25 30, 2017?

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2 A. Yes.

3 Q. Was there any subsequent discussion
4 after you read this information to her?

5 A. Yes.

6 Q. What was said after you delivered the
7 typed portion of this document?

8 A. As reflected in my notes at the time
9 and witnessed by Pat, Jennifer responded, you
10 authorized. I said, I told you to go to the
11 client, as is your obligation. And Jennifer
12 replied, I forgot.

13 Q. I'm not sure I understood. When you
14 used the language "you authorized," who said that?

15 A. Jennifer.

16 Q. So Jennifer said the words "you
17 authorized"?

18 A. Yes. And I replied, no, I told you to
19 go to the client, as is your obligation. And she
20 replied, I forgot. Which is consistent with her
21 e-mail to MCC saying she forgot.

22 Then she said, what, no package? Or
23 no package? Meaning severance package. And I
24 said, if you have any questions, you can put them
25 in writing.

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2 And then Jennifer spoke, and stated
3 the following, which -- to which I did not reply:
4 "There was no harm caused by the ethics violation
5 because they ultimately went along with it. Why
6 did you let me drive around California if you
7 knew? If you wanted me gone, you could have
8 talked to me and offered me something. If you
9 told me, I could have brought my laptop in. You
10 handled this poorly, because I have a lot of work
11 that you don't even know about and meetings today,
12 and I expected more from you."

13 Also witnessed as -- by myself and Pat
14 Saunders, who was present.

15 Q. Was there any subsequent discussion
16 after those remarks?

17 A. No.

18 Q. Had you offered her any kind of
19 severance package in connection with her
20 termination?

21 A. No.

22 Q. Why or why not?

23 A. She was terminated --

24 MS. COLWIN: Objection.

25 A. -- for -- she was terminated for

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2 cause.

3 Q. What does the term for cause mean,
4 when you use it that way?

5 A. I terminate --

6 MS. COLWIN: Objection.

7 Q. What's your meaning -- what's your
8 meaning when you use the phrase, for cause?

9 A. She did something --

10 MS. COLWIN: Objection.

11 Go ahead, you can answer.

12 A. She did something or some things
13 wrong. She was terminated because we desired for
14 her to not have employment with us anymore. And
15 you can see in my e-mail it's -- it's for a
16 variety of reasons, including a breach of trust,
17 for cause termination, as opposed to we eliminated
18 the position or we mutually think it's not working
19 out. For cause termination is, in this case,
20 because of Jennifer's behaviors and what I wrote
21 here.

22 Q. Did you reach the conclusion that
23 Ms. Fischman intended to make an unauthorized
24 demand for settlement in connection with the
25 Genomatica matter?

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2 MS. COLWIN: Objection.

3 A. Jennifer admitted it to me and MCC in
4 writing in the e-mail.

5 Q. Would she have any motivation to do
6 that?

7 MS. COLWIN: Objection.

8 A. I have no idea what her motivation
9 would be.

10 Q. Did you ask her?

11 A. I asked her, did Josh make an
12 unauthorized settlement? Giving Jennifer the
13 benefit of the doubt. And she said, no, I did.
14 And then she gave a list of reasons. She was
15 sick, there was a deadline, etcetera.

16 Q. Why would any attorney ever make an
17 unauthorized settlement demand?

18 MS. COLWIN: Objection.

19 A. That seems to be one of the
20 hypotheticals that I --

21 Q. Well, you can --

22 A. -- am being advised not to answer.

23 Q. -- answer the -- okay. You can answer
24 the question or not answer the question.

25 You've been an attorney for more than

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2 20 years, right?

3 A. I have been an attorney since I was
4 admitted in early 2004.

5 Q. So, ever in your life, have you known
6 of an attorney to make an unauthorized settlement
7 demand, other than in this purported instance?

8 MS. COLWIN: Objection.

9 A. Do I personally know any attorneys
10 that have made?

11 Q. Sure.

12 A. I don't think so.

13 Q. Are you aware of any benefit that
14 would immure to Ms. Fischman in making an
15 unauthorized settlement offer or settlement
16 demand?

17 MS. COLWIN: Objection.

18 A. No.

19 Q. Okay. So, did you come to a
20 conclusion that Ms. Fischman made a willful
21 departure from your instructions?

22 MS. COLWIN: Objection.

23 A. I'll tell you, the conclusion I
24 reached was that she broke trust. I had
25 communicated to her about the MCC case many times,

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2 as we've talked about today, and how critical it
3 was for MCHA to handle this appropriately, and to
4 keep the client close, and to make sure they knew
5 what was going on, right? And, yes, to get
6 approval. And you see the great lengths I go to,
7 to make sure that I have the right approval,
8 right?

9 After two written complaints from the
10 client, and then this third issue, which results
11 in a written admission that she did it without
12 authorization, I could not trust her, and she was
13 not going to be successful in this role. She
14 didn't have the capability. So I reached the
15 conclusion that she couldn't stay here anymore,
16 that she was terminated for cause; not for any one
17 particular issue, for that all combined, mostly
18 around trust.

19 Q. Did you become aware that there was a
20 potential for Ms. Fischman to assert a legal claim
21 against the company after you had terminated her?

22 MS. COLWIN: Objection.

23 A. Did I become aware that there was a
24 possibility she could?

25 Q. Yes.

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2 A. Well, everyone has the possibility to
3 assert a legal claim.

4 Q. Did you actively consider the
5 possibility that she might present a claim?

6 MS. COLWIN: Objection.

7 A. I considered that she might present a
8 claim.

9 Q. When did you first consider that?

10 A. Prior to her termination.

11 Q. Okay. Are you familiar with the
12 concept of a litigation hold?

13 A. Yes.

14 Q. In connection with your termination of
15 Ms. Fischman, did you initiate a legal hold or a
16 litigation hold?

17 A. As soon as we were reasonably on
18 notice of the likelihood of litigation, yes.

19 Q. How did you effectuate the litigation
20 hold?

21 MS. COLWIN: Objection.

22 A. I think either I drafted and sent, or
23 asked outside counsel to draft and send, and we
24 communicated that through the appropriate people
25 internally.

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2 Q. When was that effectuated?

3 A. I don't recall. We could look at the
4 dates.

5 Q. Do you know what happened to
6 Jennifer's cell phone, Ms. Fischman cell phone?

7 A. No.

8 Q. Do you know what happened to her legal
9 pads?

10 A. No.

11 Q. Are you able to identify anyone who
12 would know?

13 A. The cell phone, if it was returned,
14 because some people had their own cell phones, and
15 I don't know Jennifer's situation, would go back
16 through the IT department. The notepads would
17 likely be in the New York office, if we have them.
18 And Yuka Matsugu is probably the right person, but
19 I think that she's worked with counsel on
20 production.

21 Q. On or about January 19th, you became
22 aware from Tomoji Minami that there was
23 potentially an unauthorized settlement offer,
24 right, or settlement demand?

25 MS. COLWIN: Objection.

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2 Q. What steps did you take after becoming
3 aware of that communication to investigate the
4 underlying facts?

5 MS. COLWIN: Can I just have that read
6 back.

7 (Whereupon, the requested question was
8 read back by the reporter.)

9 MS. COLWIN: Objection. You can
10 answer.

11 A. I specifically asked Jennifer, did
12 Josh do what they claim he did? Again, giving
13 Jennifer the benefit of the doubt. And Jennifer
14 wrote back, no, she did. Subsequent to that, I
15 spoke directly with Josh Berman and asked his
16 recollection of that -- I believe it was a
17 Wednesday night meeting, and the offer situation.

18 Q. Did you take any other steps to
19 investigate the issue, the underlying facts?

20 A. I don't think so. I don't know.

21 Q. Did you prepare any report of your
22 investigative findings?

23 A. No. This is unlike a -- may I?

24 Q. Yes, please continue your response.

25 A. There is unlike a whistleblower

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2 hotline complaint or an HR report to the legal
3 department asking for an investigation.

4 Q. Okay. Did you inform Ms. Costa of
5 your finding of fact?

6 MS. COLWIN: Objection.

7 A. As I mentioned, Donna was with me real
8 time as those e-mails came in from Tomoji, to
9 Jennifer, from Jennifer, and from Jennifer to
10 Tomoji.

11 Q. Did you inform Ms. Costa of your
12 discussions with Mr. Berman?

13 A. I think so. I'm pretty confident that
14 I told both Donna and Pat that I wanted to hear
15 from Josh before I took final action.

16 Q. Did you inform Ms. Costa of your
17 conversation with Ms. Fischman?

18 A. What conversation with Ms. Fischman?

19 Q. Didn't you say you spoke to
20 Ms. Fischman as part of your investigation?

21 MS. COLWIN: Objection.

22 A. No. I said I e-mailed her.

23 Q. E-mail. Okay. Forgive me.

24 A. No problem.

25 Q. Did you inform Ms. Costa of your

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2 e-mail communications with Ms. Fischman?

3 A. As I mentioned, I was sitting with
4 Donna in her office real time as all of those
5 communications happened, and I talked to her about
6 them as they occurred.

7 Q. When did you first reach the
8 conclusion that your intent was to terminate
9 Ms. Fischman?

10 A. That Thursday morning when I got that
11 final mea culpa e-mail, where Jennifer, who had
12 the opportunity to tell me about this issue from
13 the moment that offer went out, to January 20th in
14 the morning, and determined not to tell me any of
15 it, for it to be a surprise to Tomoji, for it to
16 be a surprise to me in the morning, and for her to
17 react and communicate to Japan without asking me,
18 how should we handle this? They're upset. For
19 all the things you've told me about how to handle
20 this -- this litigation, these matters and this
21 trust and this relationship, what should we do?
22 She fires off a mea culpa, it doesn't matter,
23 don't worry, big deal. That was the moment.

24 Q. Okay. And the fact of the existence
25 of the offer that was conveyed on January 7th was

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2 not a topic of discussion with Mr. Takimoto during
3 his visit; is that correct?

4 MS. COLWIN: Objection.

5 A. Can you say it again?

6 MR. BERMAN: Can you repeat that back,
7 please.

8 (Whereupon, the requested question was
9 read back by the reporter.)

10 A. It was not a topic of the
11 conversation.

12 Q. When was the first time that you
13 conveyed your intention to terminate Ms. Fischman
14 to anyone else?

15 A. Pat Saunders would have been the next
16 person, and very likely that Thursday or Friday
17 following. I don't recall.

18 Q. At the time you made your decision to
19 terminate Ms. Fischman, did you have any other
20 reason to terminate her?

21 A. Things had been going relatively well
22 for a period of time, which is why I was surprised
23 that I found myself in that situation. I had been
24 communicating with Jennifer about her tone and
25 about her culture, right? There's a lot of -- you

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2 see, it wasn't that long of a period, right?

3 We're talking about November 2015 to January 2017.

4 So, she was making progress in those
5 areas, but certainly was not complete and
6 proficient in those areas. But that's -- what
7 really occurred, you know, the reason why I made
8 the determination on that Thursday was what you
9 see here. It's everything that's outlined here,
10 but really primarily it was, I can't -- I can't
11 trust her. I can't trust her to be a member of
12 this legal department. She doesn't communicate
13 with me, she doesn't communicate with the client.

14 Yes, she may have also violated the
15 ethics rule in making this settlement authority;
16 and that's bad enough, but I can't trust her to do
17 this job or to advance this department. So, yes,
18 there are other reasons, but the primary reason
19 was -- those primary reasons were what occurred
20 that Thursday.

21 Q. Other than what you've just described,
22 is there any other basis that you had to terminate
23 Ms. Fischman at the time that you did so?

24 MS. COLWIN: Objection.

25 A. Basis to terminate for cause? I mean,

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2 at will, right, I can just -- we can just go our
3 separate ways, but I did not have an intention to
4 terminate Jennifer on the basis of other things
5 before that Thursday, the 19th.

6 Q. What about on January 30th, that was
7 when you actually notified her of the termination,
8 correct?

9 A. Yes.

10 Q. Did you have any other bases to
11 terminate her on January 30th that you haven't
12 already related to me?

13 MS. COLWIN: Objection.

14 A. As between the 19th and the 30th?

15 Q. Yes.

16 A. Well, continued failure to tell me. I
17 will tell you, I was pretty surprised that we
18 spent that week in California and that the entire
19 time, whether it was in the car or at business
20 meetings, that she never confided in me what
21 happened. She never expressed any sort of remorse
22 or mis -- or understanding that this was a
23 problem. This was a major problem. We have a
24 client, a really critical client, who's very upset
25 with you, and all you did was shoot off an e-mail

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2 and say, my fault, no big deal. I was kind of
3 surprised by that. So that would be a continuing
4 or additional concern.

5 Q. After January 30th, so after
6 Ms. Fischman had already been terminated --

7 A. Yes.

8 Q. -- did you become aware at any point
9 of any additional reasons which would justify
10 Ms. Fischman's termination?

11 A. Yes.

12 Q. What were they?

13 A. So, a very similar issue to the
14 Genomatica case occurred, and it occurred with
15 regard to a company called Technophar,
16 T-E-C-H-N-O-P-H-A-R, and two related executives,
17 the Kalin, Victor Kalin (phonetic) and Diane, I
18 think, maybe I'm wrong about her name, who were
19 being terminated from their positions. And the
20 Technophar business reports up, or is owned by the
21 Qualicaps business. And the global CEO of the
22 Qualicaps business was named Ciro Ahumada,
23 A-H-U-M-A-D-A. I think.

24 And Jennifer was working with Ciro on
25 reducing the risk in the termination of Victor and

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2 Diane. She was using outside counsel, because
3 this was in Canada, and employment law, as you may
4 know, is not the same in the U.S. and Canada, so
5 we had outside counsel. Jennifer was leading that
6 and giving advice to Ciro, who was the decision
7 maker; Qualicaps -- really Ciro being the CEO of
8 the group.

9 And what I learned, having taken on
10 that matter after Jennifer departed, was that
11 Jennifer authorized a settlement offer, confirmed
12 by outside counsel, saying, you know, outside
13 counsel communicates to me, Jennifer said, yes,
14 it's all approved, this, this, this and this,
15 whatever it was, and Ciro saying, that's not what
16 I said to Jennifer. That's not what I approved.
17 And me communicating back to him, well, okay, what
18 do we do now? We're in this situation and we
19 have -- I think it was a -- without, you know,
20 disclosing all the details, it was an or/and
21 situation, where I think Ciro had suggested, I'm
22 comfortable providing either A or B, as part of
23 this reduction. And Jennifer provided and.

24 And I'm pretty confident outside
25 counsel said, and? And Jennifer said, yes. And

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2 Ciro said, I never said and, I said or. And I
3 said, you know, I'm sorry that that's where we
4 are, and what do we do? And I helped him through
5 that resolution.

6 But, yes, that -- it's very similar to
7 what happened in Genomatica, by Jennifer's
8 authority, and I had no knowledge of this
9 situation, she didn't confide in me, she didn't
10 tell me. You know.

11 Q. Other than what you have just related
12 to me with respect to the Kalin family situation,
13 after January 30, 2017, did you have any other
14 additional bases for termination of Ms. Fischman
15 that you have not already related to me?

16 A. Yes.

17 Q. What are those?

18 A. Jennifer accused Tomoji Minami in
19 e-mail, and I think we've produced it, of
20 backstabbing. And, as a compliance person, it's
21 really critical, one of the effective
22 element -- one of the elements of an effective
23 compliance program is open lines of
24 communications. We want reports. More reports
25 are better. Open lines of communication about any

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2 potential violation of law or compliance are
3 critical. That's one of the essential elements of
4 an effective program. And Jennifer should know
5 that, as a lawyer and as the former chief
6 compliance officer.

7 And when Tomoji said, Nick, did Josh
8 make this offer? Jennifer writes to him, that's
9 what we call backstabbing. That's very aggressive
10 and completely inappropriate for a member of the
11 compliance department, legal department, to
12 communicate to someone that they should feel
13 uncomfortable or they shouldn't communicate in an
14 open way about a matter that they think is
15 important, or maybe sensitive, or maybe a
16 violation. That was -- that was pretty bad. I
17 learned that after the fact, also.

18 Q. Are there any other reasons that you
19 became aware of that would justify Ms. Fischman's
20 termination, in your view, after January 30th of
21 2017?

22 A. I don't recall anything else. Those
23 are the two major ones.

24 Q. Are there any other bases that MCHA
25 had or learned of after Ms. Fischman's departure

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2 which would justify her termination, in your view?

3 MS. COLWIN: Objection.

4 A. Not to my knowledge.

5 Q. Did the Genomatica matter ultimately
6 settle?

7 A. Yes.

8 Q. What was the dollar value of that
9 settlement?

10 MS. COLWIN: Objection.

11 A. I think that's confidential as to
12 Genomatica and MCC.

13 Q. Well, I'm not sure what that means in
14 this context, but did it end up being compromised
15 for less than the amount that Ms. Fischman
16 purportedly told Josh to ask for?

17 MS. COLWIN: Objection.

18 A. I'm not sure I understand that
19 question.

20 Q. Well, the settlement demand made on
21 January 7th was in the amount of \$2.3 million,
22 correct?

23 A. I think that's right.

24 Q. Did the matter ultimately get settled
25 for less than that?

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2 MS. COLWIN: Objection. Again,
3 attorney/client privileged information.

4 MR. BERMAN: I don't think that is --

5 MS. COLWIN: Sure it is.

6 MR. BERMAN: Hold on. We can mark the
7 amount of settlement for a ruling as to
8 whether it's privileged. I'll agree with
9 you that it's confidential and it would be
10 handled according to the confidentiality
11 agreement in this case, but I don't think a
12 settlement amount is privileged.

13 MS. COLWIN: I'm going to direct you
14 not to answer. Mark it for a ruling.

15 RL MR. BERMAN: Okay. Please mark that
16 for now, and we'll set that issue aside.

17 THE WITNESS: Okay.

18 MR. BERMAN: Let's take a short break.

19 MR. COLWIN: Sure.

20 (Recess taken: 4:26 to 4:41 p.m.)

21 MR. BERMAN: Back on the record.

22 Q. Mr. Oliva, do you recall earlier I
23 asked you about the steps you took to execute a
24 litigation hold?

25 A. Yes.

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2 Q. Did it take you some amount of time to
3 pull together the language to craft that
4 litigation hold?

5 MS. COLWIN: Objection.

6 A. I don't remember.

7 Q. During the process of coming up with
8 the language, before you determined what language
9 you were going to use, did you take any steps to
10 effectuate preservation of any relevant materials
11 or documents or communications?

12 MS. COLWIN: Objection.

13 A. I'm sure that we were very careful
14 about ensuring that the documents were preserved
15 in this case, as we do for all litigation.

16 Q. During the course of your tenure in
17 the GC position, did you communicate with
18 Ms. Fischman via text message?

19 A. Maybe.

20 Q. For work purposes?

21 A. Yeah. Maybe.

22 Q. Did you communicate with Ms. Costa via
23 text messages for work purposes?

24 MS. COLWIN: Objection.

25 A. I think so.

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2 Q. Did you communicate with any of your
3 clients through text messaging, rather than
4 e-mail?

5 A. I recall getting what I would consider
6 to be a compliance report by text message because
7 I was on-site and someone knew I was on-site and
8 they wanted to speak with me confidential, and so
9 they got my phone number and texted me. But it
10 was not my practice to text clients, but I can't
11 say no for sure. You know, it's possible that
12 clients texted me.

13 Q. To the best of your knowledge, have
14 any relevant text message communications between
15 you and Ms. Fischman been preserved?

16 A. I would -- if there were text messages
17 to preserve, then I'm sure we would have preserved
18 them.

19 Q. Would those have been turned over to
20 your counsel?

21 A. Yes.

22 Q. Same question with respect to text
23 communications with Ms. Costa. To the best of
24 your knowledge, have those been preserved?

25 A. Well, I'm sure that -- I'm confident

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2 that the preservation notice was clear, that it
3 didn't matter what media.

4 Q. Okay. So to the best of your
5 knowledge, all relevant materials have been
6 provided to your counsel?

7 A. Yes.

8 Q. With respect to the communication on
9 January 19 of 2017 with Tomoji, what entity is
10 Tomoji affiliated with?

11 A. Currently, or you're talking January
12 19th?

13 Q. At that time, on January 19th.

14 A. He was at MCHJ.

15 Q. With respect to the Genomatica
16 litigation, who was the client?

17 A. MCC.

18 Q. What role did MCHJ have in MCHA's
19 representation of MCC in the Genomatica
20 litigation?

21 A. At that time, the legal function for
22 the MCC group was housed in MCHJ.

23 Q. So was this like a co-counsel
24 agreement or situation between MCHA and MCHJ with
25 respect to the representation of MCC?

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2 MS. COLWIN: Objection.

3 A. I don't think that you can identify it
4 that way, because the legal systems are very
5 different. As I mentioned, there's a bengoshi.
6 But most of the people who serve in the legal
7 function in MCHA group and in other Japanese
8 companies are not practicing attorneys. They're
9 college graduates, and they go to work at a
10 company, and they may do rotation through the
11 legal function.

12 So MCHJ is where they house the legal
13 function, but remember, Japan is a very different
14 style country, it's statutory civil law country,
15 so it's not comparing the same thing. So it's
16 really hard to answer that question. To do my
17 best to answer that question, MCHJ would
18 typically -- I think, typically advise MCC about
19 legal matters for Japan or other Asia.

20 Q. Would you call that an administrative
21 entity, MCHJ?

22 MS. COLWIN: Objection.

23 A. I don't know what else they did, but
24 the legal function of MCHJ would have reported up
25 at that time through the overall MCHC

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2 administrative function, ultimately.

3 Q. Thank you.

4 From your perspective as an attorney,
5 settlement authorization on the Genomatica matter
6 could have been conveyed to MCHA through MCHJ?

7 MS. COLWIN: Objection.

8 Q. Does that make sense?

9 A. It makes sense.

10 I think if we got an e-mail from
11 Tomoji saying Takimoto-san has communicated, or
12 MCC's position is, that we would have relied on
13 that. But it would be incredibly unusual, in fact
14 unthinkable, that MCC people wouldn't also be on
15 that communication.

16 So they may have relied on Tomoji to
17 effectively communicate with us, whether it's for
18 English or because it's kind of legal
19 conversation. But I think -- I think we would
20 have relied on an e-mail from Tomoji with the
21 others copied, yes.

22 Q. In the event of a direct communication
23 from Mr. Takimoto to MCHA conveying someone with
24 authority, that would have been sufficient for
25 MCHA's purposes, correct?

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2 MS. COLWIN: Objection.

3 A. Can you say it again?

4 MR. BERMAN: Can you read it back,
5 please.

6 (Whereupon, the requested question was
7 read back by the reporter.)

8 MR. BERMAN: So let's try that again.
9 Let me actually strike that question and ask
10 a different question.

11 Q. Would a direct communication from
12 Mr. Takimoto suffice for the purposes of conveying
13 settlement authority to MCHA for the purposes of
14 the Genomatica matter?

15 MS. COLWIN: Objection.

16 A. If Takimoto-san wrote an e-mail
17 saying, I authorized this, then the answer would
18 be yes. He was an officer of MCC, he could speak
19 for them. But, again, I repeat, I think it would
20 be very unusual for him to do that without a whole
21 bunch of other people copied.

22 Q. Okay.

23 A. And I think it's also generally un --
24 it would be generally unusual for Takimoto-san to
25 be -- to write that kind of e-mail to us.

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2 Q. Actually, I don't think we have to
3 look at it necessarily, but do you recall earlier
4 today looking at Exhibit 13, which was the ENE
5 authorization document that you requested?

6 A. Yes.

7 Q. So, once you had that document in your
8 possession, did you feel like you had what you
9 needed to attend the first ENE?

10 MS. COLWIN: Objection.

11 A. Yes.

12 Q. Did you feel any need to reconfirm
13 that you had what you need in order to attend the
14 ENE?

15 A. So, be reminded that I had
16 specifically asked, and asked Josh to draft, and
17 ultimately received the document that I asked for.
18 So there were multiple conversations making sure
19 very clear that I had what I needed.

20 So the answer is yes, with that in
21 hand, I felt confident that I could go to the ENE.

22 Q. And you didn't feel any need to
23 reconfirm that you had the authority conveyed to
24 you through that ENE document, correct?

25 MS. COLWIN: Objection.

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2 A. For purposes of attending the first
3 ENE?

4 Q. Correct.

5 A. Correct.

6 Q. What about with respect to attending
7 the second ENE, did you feel like you could rely
8 upon the instrument conveyed to you to attend the
9 first ENE?

10 MS. COLWIN: Objection.

11 A. No. Actually, I asked Josh do we need
12 another document? Should we get another document?
13 That kind of thing.

14 Q. Were you ultimately provided with some
15 other instrument?

16 A. No. His response was -- I don't
17 remember exactly what his response was. But we
18 didn't need another doc -- we didn't need another
19 document for purposes of the second ENE. It was
20 considered either a continuation or, essentially,
21 it's the same proceeding in front of a federal
22 magistrate. We didn't need another document.

23 Q. There have been a number of redactions
24 in the documents presented to us in this case.
25 Did you play any role in redacting the documents

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2 that were produced in the litigation?

3 MS. COLWIN: Objection.

4 A. I communicated with our counsel what I
5 felt was attorney/client privileged communications
6 of our clients.

7 Q. Did you play any role in the creation
8 of the privilege log produced in this litigation?

9 MS. COLWIN: Objection.

10 A. No, I did not create the privilege
11 log. Did I play any role? I communicated with
12 counsel.

13 Q. Okay. I'm not going to ask you about
14 those communications.

15 Were you ultimately provided with
16 settlement authority in the Genomatica matter in
17 the amount of \$2 million?

18 MS. COLWIN: Objection.

19 A. No, I don't think so. When we went to
20 the second ENE, I attended with Tomoji and
21 Utsunomiya-san and Josh Berman, and we -- they
22 were essentially the decision-makers that day. I
23 think Utsunomiya-San was the decision maker that
24 day. I did a lot of the conversing and worked
25 with Josh, but we had representatives -- we had a

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2 representative of MCC at the site.

3 Q. At any point in the Genomatica matter,
4 are you aware of the conveyance of a settlement
5 demand in the amount of \$2 million?

6 MS. COLWIN: Objection.

7 A. At any point -- can you repeat the
8 question?

9 MR. BERMAN: Can you read it back,
10 please.

11 (Whereupon, the requested question was
12 read back by the reporter.)

13 MS. COLWIN: Settlement demand. So,
14 Matt, just clarify the demand part, are you
15 asking if Genomatica was offering 2 million?

16 MR. BERMAN: No. That MCC was
17 demanding \$2 million from Genomatica, or
18 Genomatica would be paying the money to MCC.

19 MS. COLWIN: And this is the time
20 frame after Ms. Fischman was terminated,
21 correct?

22 MR. BERMAN: No. I'm asking at any
23 point in that matter.

24 MS. COLWIN: Okay.

25 A. I don't recall making a \$2 million

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2 demand of Genomatica, but it doesn't mean that
3 it's absolutely that it didn't happen. I don't
4 recall that.

5 Q. Provided that such an offer was made
6 during Ms. Fischman's employment, would she have
7 been aware of it?

8 MS. COLWIN: Objection.

9 A. I would imagine so, considering her
10 role in the litigation.

11 Q. Did you consider the possibility that
12 investigating Ms. Fischman's role in the
13 conveyance of the January 7, 2017 settlement
14 offer, that you could have a conflict of interest
15 in that investigation?

16 MS. COLWIN: Objection.

17 A. No. It was not an investigation. I
18 asked what happened, she admitted that she did it,
19 and that was all I did.

20 Q. Didn't she take the position that you
21 had authorized her activity?

22 A. No. She said she did it because she
23 was home sick, a deadline came, she thought it was
24 consistent, she thought it wasn't a big deal.
25 She, in fact, did not say, Nick, you told me to do

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2 this or, Nick, Takimoto-san told me to do -- she
3 did not say that because that's not what happened.

4 She said, almost instantly, oh, it
5 was -- I said, did Josh do this? And she said,
6 no, I did it. Why? She lists the reasons.
7 Because I was home sick, because a deadline came
8 and went.

9 Q. At any point in Ms. Fischman's
10 employment, did you give her a formal verbal
11 warning?

12 MS. COLWIN: Objection.

13 A. No.

14 Q. At any point in Ms. Fischman's
15 employment, did you give her a formal written
16 warning?

17 A. No.

18 MS. COLWIN: Objection.

19 Q. At any point in Ms. Fischman's
20 employment, did you give her a final warning?

21 MS. COLWIN: Objection.

22 A. No.

23 Q. During the tenure of your employment
24 as GCC, general counsel and corporate compliance
25 officer for MCHA, did the company have a

1 N. J. Oliva - CONFIDENTIAL

2 progressive disciplinary policy?

3 MS. COLWIN: Objection.

4 A. No. Not to my knowledge.

5 MR. BERMAN: I do not have any further
6 questions for the witness at this time.
7 However, I reserve the right to re-question
8 the witness on the basis of any further
9 questions posed to him today or on the basis
10 of any additional documents that are
11 produced in the litigation.

12 We also reserve the right to pose
13 additional questions to the witness,
14 dependent upon the result of any rulings
15 issued in connection with today's testimony
16 regarding the witness being instructed not
17 to answer my questions.

18 Thank you.

19 (Whereupon, the examination of this
20 witness was concluded at 4:57 p.m.)

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A C K N O W L E D G M E N T

STATE OF NEW YORK)

) ss.:

COUNTY OF)

I, NICHOLAS JUDE OLIVA, hereby certify
that I have read the transcript of my testimony
taken under oath in my deposition of July 15,
2021; that the transcript is a true, complete and
correct record of what was asked, answered and
said during this deposition, and that the answers
on the record as given by me are true and correct.

NICHOLAS JUDE OLIVA

Subscribed and sworn to
before me this _____ day
of _____, 2021.

NOTARY PUBLIC

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C E R T I F I C A T I O N

I, BONNIE KREUZBURG, a Notary Public
of the State of New York do hereby certify:

That the testimony in the within
proceeding was held before me at the aforesaid
time and place.

That said witness was duly sworn
before the commencement of the testimony, and that
the testimony was taken stenographically by me,
then transcribed under my supervisor, and that the
within transcript is a true record of the
testimony of said witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, that I am not interested
directly or indirectly in the matter in
controversy, nor am I in the employ of any of the
counsel.

IN WITNESS WHEREOF, I have hereunto
set my 27th day of July, 2021.

Bonnie Kreuzburg

BONNIE KREUZBURG

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